



Senate Committee On
**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

Stephen R. Wise, Chair
Lesley "Les" Miller, Jr., Vice Chair

Meeting Packet

Monday, April 19, 2004

4:00 p.m. – 6:00 p.m.

110 S

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

E X P A N D E D A G E N D A

COMMITTEE ON GOVERNMENTAL OVERSIGHT AND PRODUCTIVITY

Senator Wise, CHAIR
Senator Miller, VICE-CHAIR

DATE: Monday, April 19, 2004

TIME: 4:00 p.m. -- 6:00 p.m.

PLACE: Room 110 (EL), Senate Office Building

(MEMBERS: Senators Aronberg, Atwater, Campbell, Constantine, Cowin, Fasano, Lawson and Posey)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 2918 Atwater (Similar H 1059)	Deaf & Blind School; requires Auditor General to conduct audits of accounts & records of Fla. School for Deaf & Blind; provides that school is component of delivery of public education within Florida's K-20 education system; expands provisions re university master plans & campus development agreements to be applicable to said school; provides requirements for campus planning & concurrency management for school, etc. Amends FS.	
		ED 03/31/04 FAVORABLE GO 04/13/04 Not considered GO 04/19/04 AED AP	
2	SB 1652 Wise (Compare H 1113)	Department of State; authorizes nonstandard internal structuring of Department of State; reorganizes department; provides for assistant Secretary of State & deputy secretaries of state; deletes existing divisions of department & creates offices as internal subdivisions & provides their responsibilities; amends provisions to conform; provides definitions applicable to public libraries & state archives, etc. Amends FS. <i>(A proposed committee substitute is expected to be filed prior to the amendment deadline.)</i>	
		GO 04/13/04 Not considered GO 04/19/04 CP EE NR ATD AP	

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3	CS/CS/SB 1174 Natural Resources / Bennett et al (Similar H 1509, S 2554)	2005 Smart Growth Study Commission; creates commission; provides for its membership & requirements for voting; provides for appointments by Governor, President of Senate, & Speaker of House of Representatives; requires commission to review state's growth management programs & laws & make recommendations; requires public hearings; requires DCA to provide staff support; provides for expiration of commission, etc.	
		CP 03/15/04 Not considered CP 03/23/04 Temporarily postponed CP 03/29/04 CS NR 04/12/04 CS/CS GO 04/19/04 RC	
4	SB 2554 Geller (Similar H 1509, CS/CS/S 1174)	Smart Growth Management Commission; creates 2005 Smart Growth Management Commission; provides for its membership & requirements for voting; provides for appointments by Governor, President of Senate, & Speaker of House of Representatives; requires Transportation Secretary, Community Affairs Secretary, Environmental Protection Secretary, & Agriculture Commissioner or their designees to serve as ex officio nonvoting members; requires DCA to provide staff support, etc.	
		CP 03/23/04 FAVORABLE GO 04/13/04 Temporarily postponed GO 04/19/04 ATD AP RC	
5	SB 1598 Smith (Similar H 0191, H 0207, S 2256)	Retirement/Disability/Special Risk; provides legislative intent; revises provisions re benefits payable for total & permanent disability for certain Special Risk Class members of Florida Retirement System who are injured in line of duty; provides for contribution rate increases to fund benefits provided in certain provision; directs Statutory Revision Division to adjust contribution rates set forth in specified provision. Amends 121.091.	
		CP 03/08/04 FAVORABLE GO 04/19/04 BI AGG AP	

EXPANDED AGENDA

COMMITTEE ON GOVERNMENTAL OVERSIGHT AND PRODUCTIVITY

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1720 Margolis (Similar H 1209)	Regional Cultural Facilities/Grants; revises criteria used by Cultural Affairs Div. of Department of State in awarding certain grants; extends period over which award limitation applies; provides for certain project costs to increase over original proposed cost; authorizes local governments to use award funds as reimbursement for funds previously expended. Amends 265.702. GO 04/19/04 CP ATD AP	
7	CS/SB-1870 Agriculture-/ Erist-et-al	Lewry-Park-Zee	Withdrawn from committee by floor action
8	CS/SB 1974 Education / Wise	Retirement/Community College; provides for certain community college employees to move to Florida Retirement System defined benefit program; provides limitations on such transfers; provides transfer guidelines. ED 03/31/04 Not considered ED 04/13/04 CS GO 04/19/04 AGG AP RC	
9	SB 1978 Argenziano (Similar H 1895)	DOC/Housing Federal Prisoners; authorizes Corrections Dept. to contract with Federal Government to house prisoners convicted in federal courts in this state; specifies conditions to be included in, & to be excluded from, such contracts. Amends 944.091. CJ 03/31/04 FAVORABLE GO 04/19/04 ACJ AP	

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10	CS/SB 2498 Regulated Industries / Garcia (Similar H 1223, Compare H 1663, CS/CS/CS/S 1184, S 1990)	Condominium Associations; provides for grandfathering & modification of certain rights of unit owner; requires certain voting & approval criteria for amendments depriving owners of certain rights; creates Condominium Ombudsman Office within Fla. Land Sales, Condominiums, & Mobile Homes Div.; provides certain prospective unit buyers with separate document, rather than separate page, of frequently asked questions & answers, etc. Amends Ch. 718.	
		RI 03/31/04 Temporarily postponed RI 04/12/04 CS GO 04/19/04 JU AGG AP	
11	SB 2938 Saunders et al (Similar H 1615)	Southwest Fla. Expressway Authority; creates provisions titled "Southwest Florida Expressway Authority" & creates authority; provides for Southwest Florida Transportation System; provides State Board of Administration may act as fiscal agent; provides for lease-purchase agreement with DOT; provides for acquisition of lands & property; provides for exemption from taxation; provides eligibility for investments & security, etc. Creates 348.993-.9946. <i>(A proposed committee substitute is expected to be filed prior to the amendment deadline.)</i>	
		TR 03/30/04 FAVORABLE WITH AMEND GO 04/19/04 FT ATD AP	2
12	SB 1460 Campbell (Compare H 1925)	Crime Lab Personnel/Pub. Rec.; creates exemption from public-records requirements; provides for confidentiality of personal identifying information contained in records of current or former personnel of crime laboratory or medical examiner's office & their spouses & children; provides for future repeal & legislative review under Open Government Sunset Review Act of 1995; provides statement of public necessity. Amends 119.07.	
		CJ 03/24/04 FAVORABLE HC 03/31/04 WITHDRAWN GO 04/19/04 RC	

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13	CS/SB 2704 Children and Families / Atwater	Identity of Child/Pub. Rec.; provides that certain information which would reveal identity of child is exempt from requirement that public records be open to inspection, examination, & duplication; provides for future repeal & legislative review under Open Government Sunset Review Act of 1995; provides statement of public necessity. Amends 119.07.	
		CF 03/24/04 CS CJ 04/13/04 FAVORABLE WITH AMEND GO 04/19/04 RC	1
14	SB 2082 Aronberg (Identical H 0635)	Children/Recreation Program/Pub.Rec.; provides exemption from public records requirements for names, home addresses, telephone numbers, social security numbers, & photographs of children who participate in government-sponsored recreation programs or camps, names & locations of schools attended by such children, & names, home addresses, telephone numbers, & social security numbers of parents or guardians of such children, etc. Amends 119.07.	
		GO 04/19/04 RC	
15	SB 2158 Fasano (Similar H 1833)	Surplus State-Owned Land/Pub. Rec.; provides time-limited exemption from public records requirements for info. re valuation of surplus state-owned land before associated agreement for purchase, exchange, or disposal is first considered for approval by Board of Trustees of Internal Improvement Trust Fund; authorizes State Lands Div. in DEP to disclose valuation info. under certain circumstances, notwithstanding confidentiality requirement, etc. Amends 253.034.	
		NR 04/12/04 FAVORABLE GO 04/19/04 RC	

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16	CS/SB 3006 Ethics and Elections / Cowin (Linked CS/CS/S 3004)	Public Records/Electronic Filings; creates exemption from public-records requirements for user identification, passwords, & similar data used in making electronic filings by campaign finance reports & for preliminary information stored in electronic filing system & re filing that has not yet been submitted as filed report; provides for future legislative review & repeal; provides findings of public necessity. Creates 106.0706.	
		EE 03/23/04 Discussed/Workshop	
		EE 03/31/04 CS	
		JU 04/12/04 FAVORABLE	
		GO 04/19/04	
		RC	

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2918
SPONSOR: Senator Atwater
SUBJECT: Florida School for the Deaf and the Blind
DATE: April 5, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	Favorable
2.	Wilson <i>W</i>	Wilson <i>W</i>	GO	
3.			AED	
4.			AP	
5.				
6.				

I. Summary:

The bill requires the Auditor General to conduct annual audits of the accounts and records of the Florida School for Deaf and Blind. The school is defined as a component of the delivery of public education within Florida’s K-20 education system and is identified as being subject to examination by the Inspector General of the Department of Education. The bill expands provisions regarding university master plans and campus development agreements to make those sections applicable to the Florida School for the Deaf and the Blind. The bill reenacts s. 163.3177 (6) (h), Florida Statutes, to incorporate the amendments made to cross referenced sections of the bill.

This bill substantially amends the following sections of the Florida Statutes: 11.45, 1001.20, 1002.36, and 1013.30, and reenacts section 163.3177 (6) (h), Florida Statutes.

II. Present Situation:

Founded in 1885, the Florida School for the Deaf and the Blind is a state-supported boarding school for eligible hearing-impaired and visually-impaired students, pre-school through 12th grade. The school serves approximately 700 students from its St. Augustine campus. The Florida School for the Deaf and the Blind operates under the leadership and direction of its Board of Trustees, pursuant to section 1002.36, Florida Statutes. The board consists of seven members who are appointed by the Governor and confirmed by the Senate. One of its members is required to be a blind person and one is required to be a deaf person. Each member is required to have been a Florida resident for at least ten years and the term of office for each member is four years.

The board adopts rules, subject to the approval of the State Board of Education, as it considers necessary to operate the school in conjunction with the rules of the State Board of Education.

The rules adopted by the board are published in the Florida School for the Deaf and the Blind Rules, Chapter 6D, Florida Administrative Code. The board exercises control of the School through a board appointed president, who is the chief administrative officer of the School and appoints and supervises all other School employees.

The School's purchasing procedures are governed by ch 287, F.S., and rules and regulations of the Florida Department of Management Services. Personnel matters are governed by Florida School for the Deaf and the Blind Rules, Chapter 6D-6, Florida Administrative Code, and Department of Management Services Rules, Chapter 60L, Florida Administrative Code, as appropriate for the position.

The school is part of the state system of public education and is funded through the Florida Department of Education. The Legislature appropriates fixed capital outlay moneys to the school on an annual basis from the Public Education Capital (PECO) and Debt Service Trust Fund pursuant to Art. XII, s. 9(a)(2) of the State Constitution, as amended.

Under current law, the school:

- must submit proposed administrative rules to the Board of Education for approval, although approval is deemed automatic if the board does not disapprove of the proposed rule in 60 days,
- must present its Legislative Budget Request directly to the Legislature,
- is allowed to invest its monies in any investment that the State Board of Administration is authorized to invest in, and
- is located in St. Johns County.

Current law also provides that state agencies must receive approval of the attorney general to procure legal services from a private law firm.

Section 1013.30, F.S., requires universities to create and maintain campus master plans and campus development agreements. The relationship between the universities and the communities in which they are located is governed by s. 1013.30, F.S.

The Auditor General issued Audit Report No. 03-095, regarding the Florida School for the Deaf and the Blind, on December 19, 2002. The Auditor General's summary of findings, at pages 3-4, is:

Finding No. 1: The internal audit function was underutilized and reported to School management rather than to the Board of Trustees or an Internal Audit Committee.

Finding No. 2: Contrary to State law, for the fiscal years ended June 30, 2001, and 2002, the School deposited approximately \$1.17 million and \$1.22 million, respectively, in accounts outside the State Treasury.

Finding No. 3: Incompatible duties were assigned to two Student Bank employees.

Finding No. 4: Emergency and single source procurements were inadequately documented, or inappropriately applied, to eight contracts totaling approximately \$1.2 million.

Finding No. 5: Contrary to state law, the School hired a lobbyist to represent the School in legislative matters for the fiscal years ended June 30, 2001, and 2002. Additionally, the \$80,000 annual payments made to the lobbyist were not reported on the School's semiannual lobbyist expenditure reports.

The lobbyist in question is listed in the state automated personnel system as working under a twelve-month contract with the official headquarters at Moore Hall on the School campus in St. Augustine. The 2004 legislative lobbyist registration database indicates the mailing address for this same person as a residential street address in Tallahassee. That database also indicates this person to have two other named principals, one a state university in another city and the other a private health care association.

Finding No. 6: Payments totaling approximately \$34,000 for consultants' travel were not properly documented and paid in accordance with s. 112.061, F.S.

Finding No. 7: Acquisitions of real estate totaling approximately \$2.2 million (including those currently under contract) were not made in accordance with applicable laws and rules, and good business practice.

Finding No. 8: The School's campus planning documents were not comprehensive and up-to-date, and did not agree with one another in certain details; consequently, they did not provide assurance that the School's projected six-year, \$67 million expansion and renovation efforts would be conducted in an organized and logical manner, and only as necessary to meet the legitimate needs of the School.

Finding No. 9: The School did not adequately monitor and review the performance of its construction manager, or the payment requests submitted by that manager, for approximately \$239,000 of work related to the construction of an \$8 million vocational-technical high school on the School's campus.

Finding No. 10: Controls and documentation related to the disposal of surplus tangible personal property were inadequate to support the disposal of approximately \$448,000 of such property during the fiscal year ended June 30, 2001.

Finding No. 11: Contrary to s. 112.313(3), F.S., the School contracted for services with the privately held corporation of an Other Personal Services (OPS) employee. The related payments, which totaled approximately \$49,000, were used by the corporation to compensate another employee who had been placed on leave-without-pay status.

Finding No. 12: Fourteen of the 30 position descriptions reviewed had not been updated within the last three years.

Finding No. 13: The \$579,000 medical services program with the University of Florida was not efficiently administered and the related reporting to the Legislature was not complete.

In the School's reply to the audit findings¹, the president of the School took the position that the School is free to manage its own affairs, under its Board of Trustees, without regard to any statutory or rule provisions that do not specifically mention the School.² There is no constitutional, statutory, or case law support for this position.³

III. Effect of Proposed Changes:

Section 1. The bill amends s. 11.45, F.S., to require the Auditor General to conduct annual audits of the accounts and records of the Florida School for the Deaf and the Blind.

Section 2. The bill amends s. 1001.20 (4) (e), F.S., to identify the school as being subject to examination by the Inspector General of the Department of Education should allegations of waste, fraud, or financial mismanagement be made against the school.

Section 3. The Florida School for the Deaf and the Blind is defined as a component of the delivery of public education within Florida's K-20 education system but, unless otherwise provided by law, shall comply with all laws and rules generally applicable to state agencies. The bill requires annual audits of the school by the Auditor General and makes the school subject to investigation by the Inspector General of the Department of Education pursuant to law. The bill amends the statutory procedure used by the State Board of Education to approve rules submitted by the school. Instead of a submitted rule being approved if the State Board does not disapprove the rule, the State Board must act to affirm adoption of the rule.

The bill requires the board of trustees to submit its Legislative Budget Request through the Department of Education, which must approve the request before it is submitted to the Legislature.

The bill provides that the school is limited to the same list of investments authorized of local governments (enumerated at s. 218.415(16)(a)-(f), F.S.), except for monies invested in The Common Fund, which is a current option.

The bill specifies that the board of trustees of the school is authorized to procure legal services without the prior written approval of the Attorney General.

The bill restates current provisions of Florida Statute relating to the authority of the board of trustees to reemploy certain retired individuals and with regard to the participation of certain individuals in the Deferred Retirement Option Program (DROP). Other responsibilities of the board of trustees are identified.

¹ Letter from Elmer L. Dillingham, Jr., November 21, 2002, included as an addendum to Auditor General Report 03-095.

² Auditor General Report 03-095, page 4.

³ The Attorney General has twice opined that the school is subject to state general law. See AG Opinions 078-162 and 94-95.

The bill requires all funds received other than gifts, donations, and bequests be deposited in the State Treasury, expended as authorized in the General Appropriations Act, and that all purchases must be in accordance with the provisions of ch. 287, F.S.

The bill provides that current laws applicable to all state agencies are specifically applicable to the school. Those provisions require the school to:

- Deposit all funds other than gifts, donations, and bequests into the State Treasury.
- Utilize state purchasing laws in ch. 287, F.S.
- Provide a veteran's preference in hiring.
- Comply with travel and per diem rates set forth in s. 112.061, F.S.

The bill deletes the statutory reference to the Florida School for the Deaf and the Blind being located in St. Johns County.

Section 4. The bill amends s. 1013.30, F.S., to include the Florida School for the Deaf and the Blind with state universities in the definition of institutions which must meet certain statutory requirements for the development of campus master plans and campus development agreements with local governments.

Section 5. Section 163.3177 (6) (h), Florida Statutes, is reenacted for the purpose of incorporating the amendments to s. 1013.30, F.S., made by section 4 of the bill.

Section 6. The effective date of the bill is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Education states that additional administrative costs may be incurred to provide the necessary documentation to facilitate the annual audit process.

The Auditor General conducts an audit of the accounts and records of the Florida School for the Deaf and the Blind on a biennial schedule. Changing the audit cycle to every year will involve additional expense. The Auditor General's Office estimates the cost at an additional \$125,000 every other year, but believes the cost may be able to be covered within its existing budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The 1995 Legislature enacted significant changes to the laws governing the investment of public funds in the aftermath of several significant, large-scale financial scandals and breaches of fiduciary duties by investment managers. Section 218.415, F.S., was created to provide a detailed accountability system for the prudent management of investments by named public fiduciaries. In its current form this bill adopts only subsection (16) of that local government investment policy. It does not require the school to abide by any of the other provisions of the section. A consequence of this is that the school is given total discretion for investment and investment policy-making that may be inappropriate to its best financial interests and may not be reduced to writing. The current investment procedures for the school's endowment fund, revised May 16, 2003, provides adherence to the requirements imposed by s. 215.47, F.S., on permitted investments of the State Board of Administration.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: PCS/SB 2918

SPONSOR: Governmental Oversight and Productivity Committee and Senator Atwater

SUBJECT: Florida School for the Deaf and the Blind

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	Favorable
2.	Wilson <i>W</i>	Wilson <i>W</i>	GO	
3.			AED	
4.			AP	
5.				
6.				

I. Summary:

The bill requires the Auditor General to conduct annual audits of the accounts and records of the Florida School for the Deaf and Blind. The school is defined as a component of the delivery of public education within Florida's K-20 education system and is identified as being subject to examination by the Inspector General of the Department of Education. The bill expands provisions regarding university master plans and campus development agreements to make those sections applicable to the Florida School for the Deaf and the Blind. The bill reenacts s. 163.3177 (6) (h), Florida Statutes, to incorporate the amendments made to cross referenced sections of the bill. The bill also creates a direct-support organization to act on behalf of the School.

This bill substantially amends the following sections of the Florida Statutes: 11.45, 1001.20, 1011.55 and 1002.36. It reenacts section 163.3177 (6) (h), Florida Statutes, and creates s. 1013.351, F.S.

II. Present Situation:

Founded in 1885, the Florida School for the Deaf and the Blind is a state-supported boarding school for eligible hearing-impaired and visually-impaired students, pre-school through 12th grade. The school serves approximately 700 students from its St. Augustine campus. The Florida School for the Deaf and the Blind operates under the leadership and direction of its Board of Trustees, pursuant to s. 1002.36, F.S. The board consists of seven members who are appointed by the Governor and confirmed by the Senate. One of its members is required to be a blind person and one is required to be a deaf person. Each member is required to have been a Florida resident for at least ten years and the term of office for each member is four years.

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Under current law, the school:

- Must submit proposed administrative rules to the Board of Education for approval, although approval is deemed automatic if the board does not disapprove of the proposed rule in 60 days;
- Must present its Legislative Budget Request directly to the Legislature;
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Current law also provides that state agencies must receive approval from the Attorney General to procure legal services from a private law firm.

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Finding No. 8: The school's campus planning documents were not comprehensive and up-to-date, and did not agree with one another in certain details; consequently, they did not provide assurance that the school's projected six-year, \$67 million expansion and renovation efforts would be conducted in an organized and logical manner, and only as necessary to meet the legitimate needs of the school.

Finding No. 9: The school did not adequately monitor and review the performance of its construction manager, or the payment requests submitted by that manager, for approximately \$239,000 of work related to the construction of an \$8 million vocational-technical high school on the school's campus.

Finding No. 10: Controls and documentation related to the disposal of surplus tangible personal property were inadequate to support the disposal of approximately \$448,000 of such property during the fiscal year ended June 30, 2001.

Finding No. 11: Contrary to s. 112.313(3), F.S., the school contracted for services with the privately held corporation of an Other Personal Services (OPS) employee. The related

payments, which totaled approximately \$49,000, were used by the corporation to compensate another employee who had been placed on leave-without-pay status.

Finding No. 12: Fourteen of the 30 position descriptions reviewed had not been updated within the last three years.

Finding No. 13: The \$579,000 medical services program with the University of Florida was not efficiently administered and the related reporting to the Legislature was not complete.

In the school's reply to the audit findings¹, the president of the school took the position that the school is free to manage its own affairs, under its Board of Trustees, without regard to any statutory or rule provisions that do not specifically mention the school.² There is no constitutional, statutory, or case law support for this position.³

III. Effect of Proposed Changes:

Section 1. The bill amends s. 11.45, F.S., to require the Auditor General to conduct annual audits of the accounts and records of the Florida School for the Deaf and the Blind.

Section 2. The bill amends s. 1001.20 (4) (e), F.S., to identify the school as being subject to examination by the Inspector General of the Department of Education should allegations of waste, fraud, or financial mismanagement be made against the school.

Section 3. The Florida School for the Deaf and the Blind is defined as a component of the delivery of public education within Florida's K-20 education system but, unless otherwise provided by law, shall comply with all laws and rules applicable to state agencies. The bill requires annual audits of the school by the Auditor General and makes the school subject to investigation by the Inspector General of the Department of Education pursuant to law. The bill amends the statutory procedure used by the State Board of Education to approve rules submitted by the school. Instead of a submitted rule being approved if the State Board does not disapprove the rule, the State Board must act to affirm adoption of the rule. The bill specifies the school as a public residential school located in St. Johns County.

The bill requires the Board of Trustees to submit its Legislative Budget Request through the Department of Education, which must approve the request before it is submitted to the Legislature.

The bill provides that the school is limited to the list of investments authorized of local governments enumerated at s. 215.47(1), (2)(d), (3), (4), and (9), F.S., except for monies invested in The Common Fund, which is a current option.

The bill specifies that the Board of Trustees of the school is authorized to procure legal services without the prior written approval of the Attorney General.

¹ Letter from Elmer L. Dillingham, Jr., November 21, 2002, included as an addendum to Auditor General Report 03-095.

² Auditor General Report 03-095, page 4.

³ The Attorney General has twice opined that the school is subject to state general law. See AG Opinions 078-162 and 94-95.

The bill requires all funds received other than gifts, donations, bequests, and student club or organization funds be deposited in the State Treasury, expended as authorized in the General Appropriations Act, and that all purchases must be in accordance with the provisions of ch. 287, F.S.

The bill provides that current laws applicable to all state agencies are specifically applicable to the school. Those provisions require the school to:

- Deposit all funds other than gifts, donations, and bequests into the State Treasury.
- Utilize state purchasing laws in ch. 287, F.S.
- Provide a veteran's preference in hiring.
- Comply with travel and per diem rates set forth in s. 112.061, F.S.

Section 4. The bill amends s. 1011.55, F.S., to provide for the school's annual legislative operating and fixed capital outlay budget submission to the Department of Education.

Section 5. The bill creates s. 1013.351, F.S., to provide for coordinated land use planning between the Trustees of the Florida School for the Deaf and the Blind and local governments.

Section 6. The bill creates s. 1002.361, F.S., to permit the School Trustees to create a direct support organization that will operate under a contractual agreement with the school.

Section 7. The effective date of the bill is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Education states that additional administrative costs may be incurred to provide the necessary documentation to facilitate the annual audit process.

The Auditor General conducts an audit of the accounts and records of the Florida School for the Deaf and the Blind on a biennial schedule. Changing the audit cycle to every year will involve additional expense. The Auditor General's Office estimates the cost at an additional \$125,000 every other year, but believes the cost may be able to be covered within its existing budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

1 A bill to be entitled
2 An act relating to the Florida School for the
3 Deaf and the Blind; amending s. 11.45, F.S.;
4 requiring the Auditor General to conduct audits
5 of the accounts and records of the Florida
6 School for the Deaf and the Blind; amending s.
7 1001.20, F.S.; including the Florida School for
8 the Deaf and Blind in the entities subject to
9 inspection by the Department of Education's
10 Inspector General; amending s. 1002.36, F.S.,
11 relating to the Florida School for the Deaf and
12 the Blind; providing that the school is a
13 component of the delivery of public education
14 within Florida's K-20 education system;
15 requiring certain compliance; revising audit
16 requirements; revising provisions specifying
17 authority of the Board of Trustees for the
18 Florida School for the Deaf and the Blind to
19 perform certain actions; revising the power and
20 authority of the board of trustees; revising
21 duties of the board of trustees; amending s.
22 1011.55, F.S.; revising the procedure for
23 legislative budget requests of the Florida
24 School for the Deaf and the Blind; creating s.
25 1013.351, F.S.; providing definitions;
26 providing a policy statement concerning the
27 coordination of planning between the board of
28 trustees and local governments on property
29 acquired after a certain date; authorizing the
30 board of trustees to enter into an interlocal
31 agreement with the municipality where the

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1 school is located; providing for the makeup of
2 the interlocal agreement; requiring the
3 submission of the interlocal agreement with the
4 Office of Educational Facilities and the state
5 land planning agency; providing for a review of
6 the interlocal agreement by the office and the
7 agency; providing for amendments of the
8 interlocal agreement; authorizing an
9 alternative process to the interlocal agreement
10 concerning expansion of the school's campus;
11 providing for improved coordination between the
12 board of trustees and the affected local
13 governments concerning future acquisitions of
14 real property; providing for the board of
15 trustees to request a determination of
16 consistency with the local government's
17 comprehensive plan and local development
18 regulations for the proposed use of property
19 acquired after a certain date; providing for a
20 local government that regulates land use to
21 make that determination; requiring that
22 disputes concerning the implementation of an
23 executed interlocal agreement be resolved in
24 accordance with ch. 164, F.S.; creating s.
25 1002.361, F.S.; authorizing the board of
26 trustees to create a direct-support
27 organization; requiring the organization to
28 operate under a contract with the board of
29 trustees; providing for the elements of the
30 contract; providing for audits of the
31 organization; providing for membership to the

1 board of directors of the organization;
2 requiring the board of trustees to adopt rules;
3 providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Paragraphs (f) through (k) of subsection
8 (2) of section 11.45, Florida Statutes, are redesignated as
9 paragraphs (g) through (l), respectively, and a new paragraph
10 (f) is added to that subsection to read:

11 11.45 Definitions; duties; authorities; reports;
12 rules.--

13 (2) DUTIES.--The Auditor General shall:

14 (f) Annually conduct audits of the accounts and
15 records of the Florida School for the Deaf and the Blind.
16

17 The Auditor General shall perform his or her duties
18 independently but under the general policies established by
19 the Legislative Auditing Committee. This subsection does not
20 limit the Auditor General's discretionary authority to conduct
21 other audits or engagements of governmental entities as
22 authorized in subsection (3).

23 Section 2. Paragraph (e) of subsection (4) of section
24 1001.20, Florida Statutes, is amended to read:

25 1001.20 Department under direction of state board.--

26 (4) The Department of Education shall establish the
27 following offices within the Office of the Commissioner of
28 Education which shall coordinate their activities with all
29 other divisions and offices:

30 (e) Office of Inspector General.--Organized using
31 existing resources and funds and responsible for promoting

1 accountability, efficiency, and effectiveness and detecting
2 fraud and abuse within school districts, the Florida School
3 for the Deaf and the Blind, community colleges, and state
4 universities in Florida. If the Commissioner of Education
5 determines that a district school board, the Board of Trustees
6 for the Florida School for the Deaf the Blind, or a public
7 postsecondary educational institution board is unwilling or
8 unable to address substantiated allegations made by any person
9 relating to waste, fraud, or financial mismanagement, the
10 office shall conduct, coordinate, or request investigations
11 into substantiated allegations made by any person relating to
12 waste, fraud, or financial mismanagement within school
13 districts, the Florida School for the Deaf and the Blind,
14 community colleges, and state universities in Florida. The
15 office shall have access to all information and personnel
16 necessary to perform its duties and shall have all of its
17 current powers, duties, and responsibilities authorized in s.
18 20.055.

19 Section 3. Subsections (1), (3), and (4) of section
20 1002.36, Florida Statutes, are amended to read:

21 1002.36 Florida School for the Deaf and the Blind.--

22 (1) RESPONSIBILITIES.--The Florida School for the Deaf
23 and the Blind, located in St. Johns County, is a
24 state-supported residential public school for hearing-impaired
25 and visually impaired students in preschool through 12th
26 grade. The school is a component of the delivery of public
27 education within Florida's K-20 education system ~~part-of-the~~
28 ~~state-system-of-public-education~~ and shall be funded through
29 the Department of Education. The school shall provide
30 educational programs and support services appropriate to meet
31 the education and related evaluation and counseling needs of

1 hearing-impaired and visually impaired students in the state
2 who meet enrollment criteria. Unless otherwise provided by
3 law, the school shall comply with all laws and rules
4 applicable to state agencies. Education services may be
5 provided on an outreach basis for sensory-impaired children
6 ages 0 through 5 years and their parents. Graduates of the
7 Florida School for the Deaf and the Blind shall be eligible
8 for the William L. Boyd, IV, Florida Resident Access Grant
9 Program as provided in s. 1009.89.

10 (3) AUDITS.--The Auditor General shall conduct annual
11 audits of ~~audit~~ the accounts and records of the Florida School
12 for the Deaf and the Blind ~~as provided in chapter 44.~~ The
13 Department of Education's Inspector General is authorized to
14 conduct investigations at the school as provided in s.
15 1001.20(4)(e).

16 (4) BOARD OF TRUSTEES.--

17 (a) There is hereby created a Board of Trustees for
18 the Florida School for the Deaf and the Blind which shall
19 consist of seven members. Of these seven members, one
20 appointee shall be a blind person and one appointee shall be a
21 deaf person. Each member shall have been a resident of the
22 state for a period of at least 10 years. Their terms of office
23 shall be 4 years. The appointment of the trustees shall be by
24 the Governor with the confirmation of the Senate. The Governor
25 may remove any member for cause and shall fill all vacancies
26 that occur.

27 (b) The board of trustees shall elect a chair
28 annually. The trustees shall be reimbursed for travel expenses
29 as provided in s. 112.061, the accounts of which shall be paid
30 by the Chief Financial Officer upon itemized vouchers duly
31 approved by the chair.

1 (c) The board of trustees has authority to adopt rules
2 pursuant to ss. 120.536(1) and 120.54 to implement provisions
3 of law relating to operation of the Florida School for the
4 Deaf and the Blind. Such rules shall be submitted to the State
5 Board of Education for approval or disapproval. After a rule
6 is approved ~~if any rule is not disapproved by the State Board~~
7 ~~of Education within 60 days of its receipt~~ by the State Board
8 of Education, the rule shall be filed immediately with the
9 Department of State. The board of trustees shall act at all
10 times in conjunction with the rules of the State Board of
11 Education.

12 (d) The board of trustees is a body corporate and
13 shall have a corporate seal. Unless otherwise provided by law,
14 all actions of the board of trustees shall be consistent with
15 all laws and rules applicable to state agencies. Title to any
16 gift, donation, or bequest received by the board of trustees
17 pursuant to subparagraph (e) 11. ~~subsection (5)~~ shall vest in
18 the board of trustees. Title to all other property and other
19 assets of the Florida School for the Deaf and the Blind shall
20 vest in the State Board of Education, but the board of
21 trustees shall have complete jurisdiction over the management
22 of the school. and

23 (e) The board of trustees is invested with full power
24 and authority to:

25 1. Appoint a president, faculty, teachers, and other
26 employees and remove the same as in its judgment may be best
27 and fix their compensation. ~~7-to~~

28 2. Procure professional services, such as medical,
29 mental health, architectural, and engineering. ~~7-and-legal~~
30 ~~services 7-to~~

1 3. Procure legal services without the prior written
2 approval of the Attorney General.

3 4. Determine eligibility of students and procedure for
4 admission.~~7-to~~

5 5. Provide for the students of the school necessary
6 bedding, clothing, food, and medical attendance and such other
7 things as may be proper for the health and comfort of the
8 students without cost to their parents, except that the board
9 of trustees may set tuition and other fees for nonresidents.~~7~~
10 ~~to~~

11 6. Provide for the proper keeping of accounts and
12 records and for budgeting of funds.~~7-to~~

13 7. Enter into contracts.~~7-to~~

14 8. Sue and be sued.~~7-to~~

15 9. Secure public liability insurance.~~7-and-to~~

16 10. Do and perform every other matter or thing
17 requisite to the proper management, maintenance, support, and
18 control of the school at the highest efficiency economically
19 possible, the board of trustees taking into consideration the
20 purposes of the establishment.

21 11.(e)1:- The-board-of-trustees-is-authorized-to
22 Receive gifts, donations, and bequests of money or property,
23 real or personal, tangible or intangible, from any person,
24 firm, corporation, or other legal entity. However, the board
25 of trustees may not obligate the state to any expenditure or
26 policy that is not specifically authorized by law.

27 2:- If the bill of sale, will, trust indenture, deed,
28 or other legal conveyance specifies terms and conditions
29 concerning the use of such money or property, the board of
30 trustees shall observe such terms and conditions.

1 ~~12.3-~~ ~~The-board-of-trustees-may~~ Deposit outside the
2 State Treasury such moneys as are received as gifts,
3 donations, or bequests and may disburse and expend such
4 moneys, upon its own warrant, for the use and benefit of the
5 Florida School for the Deaf and the Blind and its students, as
6 the board of trustees deems to be in the best interest of the
7 school and its students. Such money or property shall not
8 constitute or be considered a part of any legislative
9 appropriation, and such money shall not be used to compensate
10 any person for engaging in lobbying activities before the
11 House of Representatives or Senate or any committee thereof.

12 ~~13.4-~~ ~~The-board-of-trustees-may~~ Sell or convey by bill
13 of sale, deed, or other legal instrument any property, real or
14 personal, received as a gift, donation, or bequest, upon such
15 terms and conditions as the board of trustees deems to be in
16 the best interest of the school and its students.

17 ~~14.5-~~ ~~The-board-of-trustees-may~~ Invest such moneys in
18 securities enumerated under s. 215.47(1), (2)(d), (3), (4),
19 and (9) s.-215-47, and in The Common Fund, an Investment
20 Management Fund exclusively for nonprofit educational
21 institutions.

22 (f) The board of trustees shall:

23 1. Prepare and submit legislative budget requests for
24 operations and fixed capital outlay, including fixed capital
25 outlay-requests, in accordance with chapter 216 and ss. s-
26 1011.56 and 1013.60, to the Department of Education for review
27 and approval. The department must analyze the amount requested
28 for fixed capital outlay to determine if the request is
29 consistent with the school's campus master plan, educational
30 plant survey, and facilities master plan.

1 2. Approve and administer an annual operating budget
2 in accordance with ss. 1011.56 and 1011.57.

3 3. Require all funds received other than gifts,
4 donations, bequests, funds raised by or belonging to student
5 clubs or student organizations, and funds held for specific
6 students or in accounts for individual students to be
7 deposited in the State Treasury and expended as authorized in
8 the General Appropriations Act.

9 4. Require all purchases to be in accordance with the
10 provisions of chapter 287.

11 5.2- Administer and maintain personnel programs for
12 all employees of the board of trustees and the Florida School
13 for the Deaf and the Blind who shall be state employees,
14 including the personnel classification and pay plan
15 established in accordance with ss. 110.205(2)(d) and
16 216.251(2)(a)2. for academic and academic administrative
17 personnel, the provisions of chapter 110, and the provisions
18 of law that grant authority to the Department of Management
19 Services over such programs for state employees.

20 6. Give preference in appointment and retention in
21 positions of employment as provided within s. 295.07(1).

22 7. Ensure that the Florida School for the Deaf and the
23 Blind complies with s. 1013.30 concerning the coordination of
24 planning between the Florida School for the Deaf and the Blind
25 and local governing bodies.

26 8. Ensure that the Florida School for the Deaf and the
27 Blind complies with s. 112.061 concerning per diem and travel
28 expenses of public officers, employees, and authorized
29 persons.

30 9.3- Adopt a master plan which specifies the mission
31 and objectives of the Florida School for the Deaf and the

1 Blind. The plan shall include, but not be limited to,
2 procedures for systematically measuring the school's progress
3 toward meeting its objectives, analyzing changes in the
4 student population, and modifying school programs and services
5 to respond to such changes. The plan shall be for a period of
6 5 years and shall be reviewed for needed modifications every 2
7 years. The board of trustees shall submit the initial plan and
8 subsequent modifications to the Speaker of the House of
9 Representatives and the President of the Senate.

10 ~~4.--Seek-the-advice-of-the-Division-of-Public-Schools~~
11 ~~within-the-Department-of-Education-~~

12 ~~10.(g) The-Board-of-Trustees-for-the-Florida-School~~
13 ~~for-the-Deaf-and-the-Blind,-located-in-St.-Johns-County,-shall~~
14 Designate a portion of the school as "The Verle Allyn Pope
15 Complex for the Deaf," in tribute to the late Senator Verle
16 Allyn Pope.

17 Section 4. Section 1011.55, Florida Statutes, is
18 amended to read:

19 1011.55 Procedure for legislative budget requests for
20 the Florida School for the Deaf and the Blind.--

21 (1) The legislative budget request of the Florida
22 School for the Deaf and the Blind shall be prepared using the
23 same format, procedures, and timelines required for the
24 submission of the legislative budget of the Department of
25 Education. The Florida School for the Deaf and the Blind shall
26 submit its legislative budget request to the Department of
27 Education for review and approval. Subsequent to the
28 Department of Education's approval, the Commissioner of
29 Education shall include the Florida School for the Deaf and
30 the Blind in the department's legislative budget request to
31 the State Board of Education, the Governor, and the

1 Legislature. The legislative budget request and the
2 appropriation for the Florida School for the Deaf and the
3 Blind shall be a separate identifiable sum in the public
4 schools budget entity of the Department of Education. The
5 annual appropriation for the school shall be distributed
6 monthly in payments as nearly equal as possible.
7 Appropriations for textbooks, instructional technology, and
8 school buses may be released and distributed as necessary to
9 serve the instructional program for the students.

10 (2) The school shall submit its fixed capital outlay
11 request to the Department of Education for review and approval
12 in accordance with s. 1002.36(4)(f)1. Subsequent to the
13 department's approval, the school's request shall be included
14 within the department's public education capital outlay
15 legislative budget request ~~Fixed-capital-outlay-needs-of-the~~
16 ~~school-shall-continue-to-be-requested-in-the-public-education~~
17 ~~capital-outlay-legislative-budget-request-of-the-Department-of~~
18 ~~Education.~~

19 Section 5. Section 1013.351, Florida Statutes, is
20 created to read:

21 1013.351 Coordination of planning between the Florida
22 School for the Deaf and the Blind and local governing
23 bodies.--

24 (1) As used in this section, the term:

25 (a) "Board of Trustees" means the Board of Trustees of
26 the Florida School for the Deaf and the Blind.

27 (b) "Local government" means the municipality or
28 county in which the school is located.

29 (c) "School" means the Florida School for the Deaf and
30 the Blind.

1 (2) It is the policy of this state to require the
2 board of trustees to coordinate planning for new facilities
3 with local governments to ensure that plans for site
4 acquisition, construction, and opening of new facilities of
5 the school are facilitated, concurrent with other necessary
6 services. The planning shall include the integration of the
7 educational plant survey for the school and applicable
8 policies and procedures of the board of trustees with the
9 local comprehensive plan and land development regulations of
10 the local governments. The planning must consider the effect
11 of the location of new facilities to be located on property
12 acquired on or after January 1, 1998, including the efficient
13 use of local infrastructure, the proximity of the proposed new
14 facilities to the school's existing campus, and the effect and
15 impact of any property proposed to be acquired by the school
16 after the effective date of this act. In addition, all parties
17 to the planning process must consult with state and local road
18 departments to assist in implementing the Safe Paths to
19 Schools Program administered by the Department of
20 Transportation.

21 (3) The board of trustees and the municipality in
22 which the school is located may enter into an interlocal
23 agreement to establish the specific ways in which the plans
24 and processes of the board of trustees and the local
25 government are to be coordinated. If the school and local
26 government enter into an interlocal agreement, the agreement
27 must be submitted to the state land planning agency and the
28 Office of Educational Facilities.

29 (4) At a minimum, an interlocal agreement must address
30 the following issues:
31

1 (a) The process by which each local government and the
2 board of trustees will agree and base their plans on
3 consistent projections of the growth and needs of the school's
4 student enrollment.

5 (b) A process to coordinate and share information
6 relating to planned expansions of the school's facilities.

7 (c) Participation by affected local governments when
8 the board of trustees is evaluating potential land
9 acquisitions before the land acquisition occurs and when the
10 board of trustees proposes uses for property acquired by the
11 board of trustees on or after January 1, 1998. The local
12 governments shall advise the board of trustees as to the
13 consistency of any future land acquisitions and the uses
14 proposed by the school for lands acquired on or after January
15 1, 1998, including appropriate circumstances and criteria
16 under which the board of trustees may request an amendment to
17 the comprehensive plan for the expansion of the school's
18 campus or for school facilities to be located on property
19 acquired by the board of trustees on or after January 1, 1998.

20 (d) A process for determining the need for and timing
21 of onsite and offsite improvements to support new facilities
22 that are to be located on property acquired by the board of
23 trustees on or after January 1, 1998, except new facilities
24 for which a construction contract was entered on or before the
25 effective date of this act. The process shall address
26 identification of the party or parties responsible for the
27 improvements.

28 (e) A process for the board of trustees to inform
29 local governments of the school's enrollment demographics and
30 its capacity to meet it. The capacity reporting must identify
31 how the board of trustees will meet the demands for enrollment

1 at the school, based on the educational plant survey required
2 by s. 1013.31.

3 (f) A process for determining where and how joint use
4 of the school or local government facilities can be shared for
5 mutual benefit and efficiency.

6 (g) A procedure for resolving disputes between the
7 board of trustees and local governments, which may include the
8 dispute resolution processes contained in chapters 164 and
9 186.

10
11 The board of trustees and the local governments may choose not
12 to include a provision meeting the requirements of paragraph
13 (e). However, this decision may be made only after a public
14 hearing on the proposed decision, which may include the public
15 hearing at which the board of trustees or the local
16 governments adopt the interlocal agreements. An interlocal
17 agreement entered into under this section must be consistent
18 with the adopted comprehensive plan and land development
19 regulations of the local governments.

20 (5) (a) The Office of Educational Facilities shall
21 submit any comments or concerns regarding the executed
22 interlocal agreements to the state land planning agency no
23 later than 30 days after receipt of the executed interlocal
24 agreements. The state land planning agency shall review the
25 executed interlocal agreements to determine whether it is
26 consistent with the requirements of subsection (4), the
27 adopted local government comprehensive plans, and other
28 requirements of law. Not later than 60 days after receipt of
29 an executed interlocal agreement, the state land planning
30 agency shall publish a notice of intent in the Florida
31 Administrative Weekly. The notice of intent must state that

1 the interlocal agreement is consistent or inconsistent with
2 the requirements of subsection (4) and this subsection as
3 appropriate.

4 (b) 1. The state land planning agency's notice is
5 subject to challenge under chapter 120. However, an affected
6 person, as defined in s. 163.3184, has standing to initiate
7 the administrative proceeding, and this proceeding is the sole
8 means available to challenge the consistency of an interlocal
9 agreement with the criteria contained in subsection (4) and
10 this subsection. In order to have standing, a person must have
11 submitted oral or written comments, recommendations, or
12 objections to the appropriate local government or the board of
13 trustees before the adoption of the interlocal agreement by
14 the board of trustees and local government. The board of
15 trustees and the appropriate local government are parties to
16 any such proceeding.

17 2. In the administrative proceeding, if the state land
18 planning agency finds the interlocal agreement to be
19 consistent with the criteria in subsection (4) and this
20 subsection, the interlocal agreement must be determined to be
21 consistent with subsection (4) and this subsection if the
22 local government and board of trustees is fairly debatable.

23 3. If the state land planning agency finds the
24 interlocal agreement to be inconsistent with the requirements
25 of subsection (4) and this subsection, the determination of
26 consistency by the local government and board of trustees
27 shall be sustained unless it is shown by a preponderance of
28 the evidence that the interlocal agreement is inconsistent.

29 (c) If the state land planning agency enters a final
30 order that finds that the interlocal agreement is inconsistent
31 with the requirements of subsection (4) or this subsection,

1 the state land planning agency shall identify the issues in
2 dispute and submit the matter to the Administration Commission
3 for final action. The report to the Administration Commission
4 must list each issue in dispute, describe the nature and basis
5 for each dispute, identify alternative resolutions of each
6 dispute, and make recommendations. After receiving the report
7 from the state land planning agency, the Administration
8 Commission shall take action to resolve the issues. In
9 deciding upon a proper resolution, the Administration
10 Commission shall consider the nature of the issues in dispute,
11 the compliance of the parties with this section, the extent of
12 the conflict between the parties, the comparative hardships,
13 and the public interest involved. In resolving the matter, the
14 Administration Commission may prescribe, by order, the
15 contents of the interlocal agreement which shall be executed
16 by the board of trustees and the local government.

17 (6) An interlocal agreement may be amended under
18 subsections (2)-(5):

19 (a) In conjunction with updates to the school's
20 educational plant survey prepared under s. 1013.31; or

21 (b) If either party delays by more than 12 months the
22 construction of a capital improvement identified in the
23 agreement.

24 (7) This section does not prohibit a local governing
25 body and the board of trustees from agreeing and establishing
26 an alternative process for reviewing proposed expansions to
27 the school's campus and offsite impacts, under the interlocal
28 agreement adopted in accordance with subsections (2)-(6).

29 (8) School facilities within the geographic area or
30 the campus of the school as it existed on or before January 1,
31 1998, are consistent with the local government's comprehensive

1 plan developed under part II of chapter 163 and consistent
2 with the plan's implementing land development regulations.

3 (9) To improve coordination relative to potential
4 educational facility sites, the board of trustees shall
5 provide written notice to the local governments consistent
6 with the interlocal agreements entered under subsections
7 (2)-(6) at least 60 days before the board of trustees acquires
8 any additional property. The local government shall notify the
9 board of trustees no later than 45 days after receipt of this
10 notice if the site proposed for acquisition is consistent with
11 the land use categories and policies of the local government's
12 comprehensive plan. This preliminary notice does not
13 constitute the local government's determination of consistency
14 under subsection (10).

15 (10) As early in the design phase as feasible, but no
16 later than 90 days before commencing construction, the board
17 of trustees shall request in writing a determination of
18 consistency with the local government's comprehensive plan and
19 local development regulations for the proposed use of any
20 property acquired by the board of trustees on or after January
21 1, 1998. The local governing body that regulates the use of
22 land shall determine, in writing, no later than 45 days after
23 receiving the necessary information and a school board's
24 request for a determination, whether a proposed use of the
25 property is consistent with the local comprehensive plan and
26 consistent with local land development regulations. If the
27 local governing body determines the proposed use is
28 consistent, construction may commence and additional local
29 government approvals are not required, except as provided in
30 this section. Failure of the local governing body to make a
31 determination in writing within 90 days after receiving the

1 board of trustees' request for a determination of consistency
2 shall be considered an approval of the board of trustee's
3 application. This subsection does not apply to facilities to
4 be located on the property if a contract for construction of
5 the facilities was entered on or before the effective date of
6 this act.

7 (11) Disputes that arise in the implementation of an
8 executed interlocal agreement or in the determinations
9 required pursuant to subsection (9) or subsection (10) must be
10 resolved in accordance with chapter 164.

11 Section 6. Section 1002.361, Florida Statutes, is
12 created to read:

13 1002.361 Florida School for the Deaf and the Blind;
14 direct-support organization; authority.--

15 (1) The board of trustees of the Florida School for
16 the Deaf and the Blind may establish a direct-support
17 organization that is:

18 (a) A Florida corporation, not for profit,
19 incorporated under chapter 617 and approved by the Secretary
20 of State.

21 (b) Organized and operated exclusively to receive,
22 hold, invest, and administer property and to make expenditures
23 to or for the benefit of the Florida School for the Deaf and
24 the Blind or the board of trustees.

25 (c) An organization that the board of trustees, after
26 review, has certified to be operating in a manner consistent
27 with the goals of the Florida School for the Deaf and the
28 Blind and the board of trustees and in the best interests of
29 the state. Unless so certified, the organization may not use
30 the name of the Florida School for the Deaf and the Blind.
31

1 (2) The direct-support organization shall operate
2 under written contract with the board of trustees. The
3 contract must provide for:

4 (a) Approval of the articles of incorporation and
5 bylaws of the direct-support organization by the board of
6 trustees.

7 (b) Submission of an annual budget for the approval of
8 the board of trustees. The budget must comply with rules
9 adopted by the board of trustees.

10 (c) Certification by the board of trustees that the
11 direct-support organization is complying with the terms of the
12 contract and in a manner consistent with the goals and
13 purposes of the board and in the best interest of the state.
14 The certification must be made annually and reported in the
15 official minutes of a meeting of the board of trustees.

16 (d) The reversion to the board of trustees, or to the
17 state if the Florida School for the Deaf and the Blind or the
18 board of trustees cease to exist, of moneys and property held
19 in trust by the direct-support organization for the benefit of
20 the Florida School for the Deaf and the Blind or the board of
21 trustees, if the direct-support organization is no longer
22 approved to operate for the Florida School for the Deaf and
23 the Blind or board of trustees or if the Florida School for
24 the Deaf and the Blind or the board of trustees ceases to
25 exist.

26 (e) The fiscal year of the direct-support
27 organization, which must begin July 1 of each year and end
28 June 30 of the following year.

29 (f) The disclosure of material provisions of the
30 contract and of the distinction between the board of trustees
31 and the direct-support organization to donors of gifts,

1 contributions, or bequests, and the disclosure on all
2 promotional and fundraising publications.

3 (3) The direct-support organization shall provide for
4 an annual financial audit in accordance with s. 215.981. The
5 board of trustees and Auditor General may require and receive
6 from the organization or its independent auditor any detail or
7 supplemental data relative to the operation of the
8 organization.

9 (4) The chair of the board of trustees and the chief
10 administrative employee of the Florida School for the Deaf and
11 the Blind shall be directors of the direct-support
12 organization and shall jointly name, at a minimum, three other
13 individuals to serve as directors of the organization.

14 (5) The board of trustees may authorize the
15 direct-support organization established in this section to use
16 property of the Florida School for the Deaf and the Blind or
17 of the board of trustees, except money, and use facilities and
18 personal services subject to this section. If the
19 direct-support organization does not provide equal employment
20 opportunities to all persons regardless of race, color,
21 religion, gender, age, or national origin, it may not use the
22 property, facilities, or personal services of the Florida
23 School for the Deaf and the Blind or of the board of trustees.
24 For the purposes of this section, the term "personal services"
25 includes full-time personnel and part-time personnel as well
26 as payroll processing as prescribed by rule of the board of
27 trustees. The board of trustees shall adopt rules prescribing
28 the procedures by which the direct-support organization is
29 governed and any conditions with which a direct-support
30 organization must comply to use property, facilities, or
31

1 personal services of the Florida School for the Deaf and the
2 Blind or of the board of trustees.

3 Section 7. This act shall take effect upon becoming a
4 law.

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#1

CHAMBER ACTION

Senate

House

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**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

DATE: 4-16-04

TIME: 2:20 P.m.

Senator Wise moved the following amendment:

Senate Amendment

On page 9, line 23, delete the number "1013.30"

and insert: 1013.351

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#2

Senate

CHAMBER ACTION

HouseGOVERNMENT OVERSIGHT
AND PUBLIC AFFAIRS

DATE:

4-16-04

TIME:

10:40 A.M.

Senator Wise moved the following amendment:

Senate Amendment (with title amendment)

On page 25, between lines 16 and 17,

insert:

Section 6. Section 413.011, Florida Statutes, is amended to read:

413.011 Division of Blind Services, legislative policy, intent; internal organizational structure and powers; Rehabilitation Advisory Council for the Blind.--

(1) Policy.--It is the policy of the Legislature that all programs, projects, and activities of the division are to be carried out in a manner consistent with the following principles:

(a) Respect for individual dignity, personal responsibility, self-determination to live independently, and pursuit of meaningful careers, based on informed choice;

(b) Support for the involvement of an individual's representative if an individual requests, desires, or needs such support;

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1 (c) Respect for the individual's privacy and equal
2 access, including the use of information in accessible
3 formats; and

4 (d) Integration and full participation of individuals
5 who are blind in society on equal terms with others.

6 (2) It is the intent of the Legislature to establish a
7 coordinated program of services which will be available to
8 individuals throughout this state who are blind. The program
9 must be designed to maximize employment opportunities for such
10 individuals and to increase their independence and
11 self-sufficiency.

12 (3) {+} The internal organizational structure of the
13 Division of Blind Services shall be designed for the purpose
14 of ensuring the greatest possible efficiency and effectiveness
15 of services to the blind and to be consistent with chapter 20.
16 The Division of Blind Services shall plan, supervise, and
17 carry out the following activities:

18 (a) Recommend personnel as may be necessary to carry
19 out the purposes of this section.

20 (b) Develop and implement a state plan for vocational
21 rehabilitation services for individuals who are blind,
22 pursuant to section 101 of the Rehabilitation Act of 1973, as
23 amended.

24 (c) In conjunction with the Florida Independent Living
25 Council, develop and implement a 3-year state plan for
26 independent living services and provide independent living
27 services for blind and visually impaired individuals,
28 including services for older individuals who are blind,
29 pursuant to Title VII, chapter 2 of the Rehabilitation Act of
30 1973, as amended.

31 (d) Provide services that contribute to the

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1 maintenance of or the increased independence of older
2 individuals who are blind.

3 (e) Establish, equip, and maintain an orientation and
4 adjustment center or centers to provide independent living
5 skills training and other training such as, but not limited
6 to, instruction in Braille; use of the long white cane for
7 independent travel; homemaking and home-management skills; and
8 communication skills, including the use of computer
9 technology, to prepare individuals who are blind or visually
10 impaired for eventual vocational training, job placement, and
11 independence.

12 (f) Establish and implement a small business
13 enterprises program and serve as the state licensing agency
14 for individuals who are blind, pursuant to the federal
15 Randolph-Sheppard Act.

16 (g) Purchase and distribute specialized equipment,
17 devices, and technology, including low-vision aids, obtained
18 directly from specialty vendors without using state
19 centralized purchasing procedures.

20 (h) In cooperation with the Library of Congress,
21 provide library services to persons who are blind and persons
22 who have other print-related disabilities.

23 (i) In cooperation with other appropriate agencies,
24 provide to employers, the state education agency, and local
25 education agencies technical assistance in the provision of
26 auxiliary aids and services to people who are blind, students,
27 and their parents in complying with the Americans with
28 Disabilities Act and the Individuals with Disabilities
29 Education Act, as amended.

30 (j) Provide technical assistance to agencies within
31 the state in order to assure that information technology

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1 purchased or used by such agencies is accessible to and usable
 2 by individuals who are blind, at the time the technology is
 3 purchased or used.

4 (k) Participate, through the designation of the
 5 director or an appropriate staff member of the division, on
 6 boards, commissions, or bodies in this state for the purpose
 7 of coordinating and planning services.

8 (l) Adopt rules for administering the programs of the
 9 division.

10 (m) Apply for and receive money from any state or
 11 federal agency to support the programs of the division.

12 (n) Develop and administer any other program that will
 13 further the provision of services to people who are blind and
 14 that the division determines falls within its scope of
 15 responsibility.

16 ~~{b}--Cause-to-be-compiled-and-maintained-a-complete~~
 17 ~~register-of-the-blind-in-the-state,-which-shall-describe-the~~
 18 ~~condition,-cause-of-blindness,-and-capacity-for-education-and~~
 19 ~~industrial-training,-with-such-other-facts-as-may-seem-to-the~~
 20 ~~division-to-be-of-value.--Any-information-in-the-register-of~~
 21 ~~the-blind-which,-when-released,-could-identify-an-individual~~
 22 ~~is-confidential-and-exempt-from-the-provisions-of-s-~~
 23 ~~449-07{1}-~~

24 (o){e} Inquire into the cause of blindness, inaugurate
 25 preventive measures, and provide for the examination and
 26 treatment of the blind, or those threatened with blindness,
 27 for the benefit of such persons, and shall pay therefor,
 28 including necessary incidental expenses.

29 (p){d} Aid the blind in finding employment, teach them
 30 trades and occupations within their capacities, assist them in
 31 disposing of products made by them in home industries, assist

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1 them in obtaining funds for establishing enterprises where
2 federal funds reimburse the state, and do such things as will
3 contribute to the efficiency of self-support of the blind.

4 (g)~~(e)~~ Establish one or more training schools and
5 workshops for the employment of suitable blind persons; make
6 expenditures of funds for such purposes; receive moneys from
7 sales of commodities involved in such activities and from such
8 funds make payments of wages, repairs, insurance premiums and
9 replacements of equipment. All of the activities provided for
10 in this section may be carried on in cooperation with private
11 workshops for the blind, except that all tools and equipment
12 furnished by the division shall remain the property of the
13 state.

14 (r)~~(f)~~ Provide special services and benefits for the
15 blind for developing their social life through community
16 activities and recreational facilities.

17 (s)~~(g)~~ Undertake such other activities as may
18 ameliorate the condition of blind citizens of this state.

19 (t)~~(h)~~ Cooperate with other agencies, public or
20 private, especially the National Library Service for the
21 ~~Division of the~~ Blind and Physically Handicapped of the
22 Library of Congress and the Division of Library and
23 Information Services of the Department of State, to provide
24 library service to persons with visual, physical, or reading
25 disabilities ~~the-blind-and-other-handicapped-persons~~ as
26 defined in federal law and regulations in carrying out any or
27 all of the provisions of this law.

28 (u)~~(i)~~ Recommend contracts and agreements with
29 federal, state, county, municipal and private corporations,
30 and individuals.

31 (v)~~(j)~~ Receive moneys or properties by gift or bequest

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1 from any person, firm, corporation, or organization for any of
2 the purposes herein set out, but without authority to bind the
3 state to any expenditure or policy except such as may be
4 specifically authorized by law. All such moneys or properties
5 so received by gift or bequest as herein authorized may be
6 disbursed and expended by the division upon its own warrant
7 for any of the purposes herein set forth, and such moneys or
8 properties shall not constitute or be considered a part of any
9 legislative appropriation made by the state for the purpose of
10 carrying out the provisions of this law.

11 (w)~~(k)~~ Prepare and make available to the blind, in
12 braille and on electronic recording equipment, Florida
13 Statutes chapters 20, 120, 121, and 413, in their entirety.

14 (x)~~(t)~~ Adopt by rule:

15 1. Procedures for providing vocational rehabilitation
16 services for the blind; and-

17 2.~~(m)~~ ~~Adopt-by-rule-forms-and~~ Instructions to be used
18 by the division in its general administration.

19 (4)~~(2)~~ As used in this section, the term:

20 (a) "Act," unless the context indicates otherwise,
21 means the Rehabilitation Act of 1973, 29 U.S.C. ss. 701-797.

22 (b) "Blind" or "blindness" means the condition of any
23 person for whom blindness is a disability as defined by the
24 Rehabilitation Act of 1973, 29 U.S.C. s. 706(8)(b).

25 (c) "Department" means the Department of Education.

26 (5) There is created within the Division of Blind
27 Services a children's program to serve children who are blind
28 from 5 years of age through transition to the Vocational
29 Rehabilitation Program. This program must supplement services
30 already offered by the school system to foster the child's
31 learning and ability to function independently. The child's

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1 parents, guardian, and family members should be an integral
2 part of the program in order to foster independence.

3 (6) A state agency may use funds from all possible
4 sources to make accommodations for individuals who are blind.

5 (7) The division shall require all employees and
6 applicants for employment to undergo personnel screening and
7 security background investigations as provided in chapter 435,
8 using the level two standards for screening set forth in that
9 chapter, as a condition of employment and continued
10 employment. All division employees and applicants for
11 employment must meet level 2 screening standards as provided
12 in s. 435.04 prior to employment and as a condition of
13 continued employment.


14 (8)(3) There is hereby created in the department the
15 Rehabilitation Advisory Council for the Blind, which is an
16 advisory council as defined in s. 20.03, to assist the
17 division in the planning and development of statewide
18 vocational rehabilitation programs and services pursuant to
19 the Rehabilitation Act of 1973, as amended, to recommend
20 improvements to such programs and services, and to perform the
21 functions provided in this section.

22 (a) The advisory council shall be composed of:

23 1. At least one representative of the Independent
24 Living Council, which representative may be the chair or other
25 designee of the council;

26 2. At least one representative of a parent training
27 and information center established pursuant to s. 631(c)(9) of
28 the Individuals with Disabilities Act, 20 U.S.C. s.
29 1431(c)(9);

30 3. At least one representative of the client
31 assistance program established under the act;

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1 4. At least one vocational rehabilitation counselor
2 who has knowledge of and experience in vocational
3 rehabilitation services for the blind, who shall serve as an
4 ex officio nonvoting member of the council if the counselor is
5 an employee of the department;

6 5. At least one representative of community
7 rehabilitation program service providers;

8 6. Four representatives of business, industry, and
9 labor;

10 7. At least one representative of a disability
11 advocacy group representing individuals who are blind;

12 8. At least one parent, family member, guardian,
13 advocate, or authorized representative of an individual who is
14 blind, has multiple disabilities, and either has difficulties
15 representing himself or herself or is unable, due to
16 disabilities, to represent himself or herself;

17 9. Current or former applicants for, or recipients of,
18 vocational rehabilitation services; and

19 10. The director of the division, who shall be an ex
20 officio member of the council.

21 (b) Members of the council shall be appointed by the
22 Governor, who shall select members after soliciting
23 recommendations from representatives of organizations
24 representing a broad range of individuals who have
25 disabilities, and organizations interested in those
26 individuals.

27 (c) A majority of council members shall be persons who
28 are:

29 1. Blind; and

30 2. Not employed by the division.

31 (d) The council shall select a chair from among its

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1 membership.

2 (e) Each member of the council shall serve for a term
3 of not more than 3 years, except that:

4 1. A member appointed to fill a vacancy occurring
5 prior to the expiration of the term for which a predecessor
6 was appointed shall be appointed for the remainder of such
7 term; and

8 2. The terms of service of the members initially
9 appointed shall be, as specified by the Governor, for such
10 fewer number of years as will provide for the expiration of
11 terms on a staggered basis.

12 (f) A ~~No~~ member of the council may not serve more than
13 two consecutive full terms.

14 (g) Any vacancy occurring in the membership of the
15 council shall be filled in the same manner as the original
16 appointment. A vacancy does not affect the power of the
17 remaining members to execute the duties of the council.

18 (h) In addition to the other functions specified in
19 this section, the council shall:

20 1. Review, analyze, and advise the division regarding
21 the performance of the responsibilities of the division under
22 Title I of the act, particularly responsibilities relating to:

23 a. Eligibility, including order of selection;

24 b. The extent, scope, and effectiveness of services
25 provided; and

26 c. Functions performed by state agencies that affect
27 or potentially affect the ability of individuals who are blind
28 to achieve rehabilitation goals and objectives under Title I.

29 2. Advise the department and the division, and, at the
30 discretion of the department or division, assist in the
31 preparation of applications, the state plan, the strategic

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1 plan, and amendments to the plans, reports, needs assessments,
2 and evaluations required by Title I.

3 3. To the extent feasible, conduct a review and
4 analysis of the effectiveness of, and consumer satisfaction
5 with:

6 a. The functions performed by state agencies and other
7 public and private entities responsible for performing
8 functions for individuals who are blind.

9 b. Vocational rehabilitation services:

10 (I) Provided or paid for from funds made available
11 under the act or through other public or private sources.

12 (II) Provided by state agencies and other public and
13 private entities responsible for providing vocational
14 rehabilitation services to individuals who are blind.

15 4. Prepare and submit an annual report on the status
16 of vocational rehabilitation services for the blind in the
17 state to the Governor and the Commissioner of the
18 Rehabilitative Services Administration, established under s.
19 702 of the act, and make the report available to the public.

20 5. Coordinate with other councils within the state,
21 including the Independent Living Council, the advisory panel
22 established under s. 613(a)(12) of the Individuals with
23 Disabilities Education Act, 20 U.S.C. 1413(a)(12), the State
24 Planning Council described in s. 124 of the Developmental
25 Disabilities Assistance and Bill of Rights Act, 42 U.S.C. s.
26 6024, and the state mental health planning council established
27 under s. 1916(e) of the Public Health Service Act, 42 U.S.C.
28 300X-4(e).

29 6. Advise the department and division and provide for
30 coordination and the establishment of working relationships
31 among the department, the division, the Independent Living

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1 Council, and centers for independent living in the state.

2 7. Perform such other functions consistent with the
3 purposes of the act as the council determines to be
4 appropriate that are comparable to functions performed by the
5 council.

6 (i) 1. The council shall prepare, in conjunction with
7 the division, a plan for the provision of such resources,
8 including such staff and other personnel, as may be necessary
9 to carry out the functions of the council. The resource plan
10 shall, to the maximum extent possible, rely on the use of
11 resources in existence during the period of implementation of
12 the plan.

13 2. If there is a disagreement between the council and
14 the division in regard to the resources necessary to carry out
15 the functions of the council as set forth in this section, the
16 disagreement shall be resolved by the Governor.

17 3. The council shall, consistent with law, supervise
18 and evaluate such staff and other personnel as may be
19 necessary to carry out its functions.

20 4. While assisting the council in carrying out its
21 duties, staff and other personnel shall not be assigned duties
22 by the division or any other state agency or office that would
23 create a conflict of interest.

24 (j) ~~A~~ No council member may not ~~shall~~ cast a vote on
25 any matter that would provide direct financial benefit to the
26 member or otherwise give the appearance of a conflict of
27 interest under state law.

28 (k) The council shall convene at least four meetings
29 each year. These meetings shall occur in such places as the
30 council deems necessary to conduct council business. The
31 council may conduct such forums or hearings as the council

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1 considers appropriate. The meetings, hearings, and forums
2 shall be publicly announced. The meetings shall be open and
3 accessible to the public. The council shall make a report of
4 each meeting which shall include a record of its discussions
5 and recommendations, all of which reports shall be made
6 available to the public.

7 Section 7. Section 413.014, Florida Statutes, is
8 amended to read:

9 413.014 Community ~~Community~~-based rehabilitation
10 programs.--The Division of Blind Services shall enter into
11 cooperative agreements with community ~~community~~-based
12 rehabilitation programs as defined by the Rehabilitation Act
13 of 1973, as amended, to be the service providers for the blind
14 citizens of their communities. The division shall, as rapidly
15 as feasible, increase the amount of such services provided by
16 community ~~community~~-based rehabilitation programs. The goal
17 shall be to decrease the amount of such services provided by
18 division employees and to increase to the maximum extent
19 allowed by federal law the amount of such services provided
20 through cooperative agreements with community ~~community~~-based
21 service providers. The division shall seek, to the maximum
22 extent allowed by federal and state law and regulation, all
23 available federal funds for such purposes. Funds and in-kind
24 matching contributions from community and private sources
25 shall be used to maximize federal funds. Unless prohibited by
26 federal law or regulation, the share of the federal vocational
27 rehabilitation grant apportioned for services to the blind may
28 ~~shall be~~ not be less than 17 percent.

29 Section 8. Section 413.041, Florida Statutes, is
30 amended to read:

31 413.041 Eligible blind persons; placement in vending

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1 facilities in public places.--For the purpose of assisting
2 blind persons to become self-supporting, the Division of Blind
3 Services is hereby authorized to carry on activities to
4 promote the employment of eligible blind persons, including
5 the licensing and establishment of such persons as operators
6 of vending facilities on public property. The ~~said~~ division
7 may cooperate with any agency of the Federal Government in the
8 furtherance of the provisions of the Act of Congress entitled
9 "An Act to authorize the operation of stands in federal
10 buildings by blind persons, to enlarge the economic
11 opportunities of the blind and for other purposes," Pub. L.
12 No. 732, 74th Congress, and the ~~said~~ division may cooperate in
13 the furtherance of the provisions of any other act of Congress
14 providing for the rehabilitation of the blind which is that
15 ~~may now be in effect or is~~ may hereafter be enacted by
16 Congress.

17 Section 9. Subsections (1), (2), (4), (7), and (9), of
18 section 413.051, Florida Statutes, are amended to read:

19 413.051 Eligible blind persons; operation of vending
20 stands.--

21 (1) This section may be cited ~~shall be known~~ as the
22 Little Randolph Sheppard Act.

23 (2) As used in this section, the term:

24 (a) "Blind licensee" means any blind person trained
25 and licensed by the Division of Blind Services of the
26 Department of Education to operate a vending stand.

27 (b) "Vending stand" means any manually operated
28 cafeteria, snack bar, cart service, shelter, counter, or other
29 manually operated facility for the sale of newspapers,
30 periodicals, confections, tobacco products, foods, beverages,
31 or other such articles or services.

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1 (c) "State agency" means any agency of the state.

2 (d) "State property" means any building or land owned,
3 leased, or otherwise controlled by the state, but does not
4 include any building or land under the control of the Board of
5 Regents, a community college district board of trustees, or
6 any state correctional institution as defined in s. 944.02.

7 (e) "Property custodian" or "person in charge" means
8 any employee, agent, or person who is in control of or
9 responsible for the maintenance, operation, and protection of
10 any state property.

11 (4) The Division of Blind Services shall conduct be
12 ~~responsible-for~~ a periodic survey of all state properties and,
13 where feasible, shall establish vending facilities to be
14 operated by blind licensees.

15 (7) ~~A~~ No person or persons may not ~~shall~~ be offered or
16 granted any concession by any property custodian or person in
17 charge to operate a vending stand on any state property
18 acquired after July 1, 1979, unless the division is notified
19 of that proposed concession.

20 (9) This section does not ~~It-is-the-legislative-intent~~
21 ~~that-this-section-shall-not-apply-or-operate,-in-any-way-or~~
22 ~~any-manner,-to~~ divest any person or organization presently
23 operating a vending stand on state, county, or municipal
24 property from continuing to do so; however, the property
25 custodian or person in charge shall notify the Division of
26 Blind Services at least 180 days prior to the expiration
27 whether the ~~such~~ vending facility location is suitable for
28 operation by a blind licensee.

29 Section 10. Section 413.091, Florida Statutes, is
30 amended to read:

31 413.091 Identification cards.--

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1 (1) The Division of Blind Services of the Department
2 of Education ~~shall is-hereby-empowered-to~~ issue identification
3 cards to persons known to be blind or partially sighted, upon
4 the written request of such individual.

5 (2) The individual shall submit proof of blindness as
6 specified by the division.

7 (3) The division ~~is will-be~~ responsible for design and
8 content of the identification card and shall develop and adopt
9 ~~promulgate~~ rules, regulations, and procedures relating to the
10 eligibility and application for, and issuance and control of,
11 these identification cards.

12 Section 11. Section 413.095, Florida Statutes, is
13 created to read:

14 413.095 Retention of title to and disposal of property
15 and equipment.--

16 (1) The Division of Blind Services retains title to
17 any real or personal property, such as tools, instruments,
18 training supplies, equipment, motor vehicles, real property,
19 or other items of value acquired by the division for use by
20 people who have visual impairments or personnel employed in
21 operating programs of the division, and may repossess and
22 transfer such property for use by other people who have visual
23 impairments or personnel employed in the operation of the
24 division.

25 (2) The Division of Blind Services may offer for sale
26 any surplus items acquired in the operation of the program
27 when they are no longer necessary or may exchange them for
28 necessary items that can be used to greater advantage. When
29 any such surplus equipment is sold or exchanged, a receipt for
30 the sale or exchange which shows the consideration given for
31 the equipment must be taken from the purchaser, and the

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1 consideration must be forwarded to the division to be included
2 in the division's portfolio of investments pursuant to s.
3 413.0115.

4 Section 12. Blind services direct-support
5 organization.--

6 (1) As used in this section, the term "direct-support
7 organization" means a not-for-profit corporation incorporated
8 under chapter 617, Florida Statutes, and organized and
9 operated to conduct programs and activities; initiate
10 developmental projects; raise funds; request and receive
11 grants, gifts, and bequests of moneys; acquire, receive, hold,
12 invest, and administer, in its own name, securities, funds,
13 objects of value, or other property, real or personal; and
14 make expenditures to or for the direct or indirect benefit of
15 the state and for blind persons in this state.

16 (2) (a) The Division of Blind Services is authorized to
17 organize and incorporate a direct-support organization
18 pursuant to the requirements of this section and chapter 617,
19 Florida Statutes, to accomplish the purposes and objectives
20 set forth in this section.

21 (b) The first board of seven members of the
22 direct-support organization shall be appointed by the
23 Governor. Two members shall be appointed to serve 2-year
24 terms, three members shall be appointed to serve 3-year terms,
25 and two members shall be appointed to serve 4-year terms.
26 Thereafter, the board shall be self-appointed according to the
27 established by-laws.

28 (c) The director of the division or his or her
29 designee shall serve as an ex officio member of the board of
30 the direct-support organization.

31 (d) The direct-support organization is subject to the

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1 requirements of Section 24 of Article I of the State
2 Constitution, chapter 119, Florida Statutes, and section
3 286.011, Florida Statutes.

4 (e) Upon the dissolution of the corporation, all
5 properties of the corporation revert to the division.

6 (f) The direct-support organization shall maintain
7 donations and direct service expenditures in a bank account
8 outside of the State Treasury.

9 (g) Any administrative costs of running and promoting
10 the purposes of the corporation must be paid by private funds.

11 (3) The purposes and objectives of the direct-support
12 organization must be consistent with the priority issues and
13 objectives of the Department of Education and must be in the
14 best interests of the state, though the Division of Blind
15 Services may permit, without charge, the appropriate use of
16 property and facilities of the state by the direct-support
17 organization subject to this section. Such use must be
18 directly in keeping with the approved purposes of the
19 direct-support organization.

20 (4) Funds designated for the direct-support
21 organization must be used for the enhancement of programs and
22 projects of the Division of Blind Services. All moneys
23 received by the direct-support organization must be deposited
24 into an account of the direct-support organization and must be
25 used by the organization in a manner consistent with the
26 purposes and goals of the direct-support organization.

27 (5) The direct-support organization shall comply with
28 the audit requirements of section 215.981, Florida Statutes.

29 (6) The director of the Division of Blind Services may
30 designate employees of the division to solicit donations from
31 public or private sources to fund the authorized purposes of

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1 the direct-support organization.

2 Section 13. Sections 413.061, 413.062, 413.063,
3 413.064, 413.065, 413.066, 413.067, 413.068, and 413.069,
4 Florida Statutes, are repealed.

5
6 (Redesignate subsequent sections.)
7
8

9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 2, line 3, after the semicolon,

12
13 insert:

14 amending s. 413.011, F.S.; providing
15 legislative policy and intent; providing duties
16 of the Division of Blind Services; requiring
17 the division to develop and implement a state
18 plan for vocational rehabilitation services;
19 requiring the division to develop and implement
20 a state plan for independent living services;
21 providing for the division to purchase and
22 distribute specialized equipment without using
23 state centralized purchasing procedures;
24 exempting such equipment from certain record
25 and inventory requirements; creating a
26 children's program; requiring background
27 investigations of division personnel; requiring
28 division personnel and applicants for
29 employment to meet level 2 screening standards
30 as a condition of employment; redesignating the
31 Advisory Council for the Blind as the

Bill No. Proposed CS for SB 2918

Amendment No. _____



444416

Rehabilitation Council for the Blind; amending ss. 413.014, 413.041, 413.051, and 413.091, F.S.; modernizing terminology; requiring the division to conduct a periodic survey of state properties; creating s. 413.095, F.S.; providing for the division to retain title to certain real and personal property intended for use by people who have visual impairments and certain personnel; allowing the division to repossess, transfer, and dispose of such property; providing for rulemaking by the division; authorizing the division to create a blind services direct-support organization; providing purposes and objectives; providing for members of the board of the direct-support organization; providing that the organization is subject to s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S.; requiring expenses of the organization to be paid by private funds; providing guidelines for the use of the funds; repealing ss. 413.061, 413.062, 413.063, 413.064, 413.065, 413.066, 413.067, 413.068, and 413.069, F.S., relating to permits for soliciting funds to benefit the blind;

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

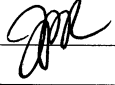

BILL: SB 1652

SPONSOR: Senator Wise

SUBJECT: Governmental Reorganization; Department of State

DATE: April 1, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea 	Wilson 	GO	
2.			CP	
3.			EE	
4.			NR	
5.			ATD	
6.			AP	

I. Summary:

The bill amends s. 20.04, F.S., to permit the Department of State (department) to have an internal structure different from the standard established in ch. 20, F.S. The principal policy and program development unit of the department is to be the "office" which is to be headed by a director or other senior management position as determined by the Secretary. It also amends s. 20.10, F.S., to specifically provide for the Secretary to appoint an Assistant Secretary and deputy secretaries to serve at the pleasure of the Secretary. The Secretary is given broad delegation authority relating to responsibilities of deputies or directors as they relate to the management, policy formulation, and functioning of department programs. The two deputy directors authorized are the Deputy Secretary for Cultural and Historical Programs and Deputy Secretary for State Records.

The current six divisions of the department are replaced with the following eight offices: Art and History Programs Office; Historic Preservation Programs Office; Community Grants Services Office; State Recording Office; Elections Office; State Library, Archives, and Records Services Office; Administrative Support Services Office; and Central Computing Support Services Office.

The changes in law relating to the current Division of Corporations (State Recording) and Division of Elections (Elections) are changes in name to reflect the program office structure. The State Library, Archive and Records Services Office continues to have responsibility for operation of the library development, archives, information, and records management programs. The current laws relating to Cultural Affairs and Historic Preservation have all responsibilities and duties changed from a specific division to the department and from a director to the Secretary of State.

The bill takes effect July 1, 2004.

This bill amends the following sections of the Florida Statutes: 15.09, 15.16, 15.18, 15.21, 17.27, 20.121, 23.22, 28.30, 97.021, 97.026, 97.053, 98.081, 98.0979, 98.101, 98.461, 99.097, 100.371, 101.015, 101.017, 101.293, 101.294, 101.545, 101.5608, 101.5614, 101.694, 101.732, 101.733, 102.111, 102.141, 105.031, 105.035, 105.036, 105.041, 106.011, 106.021, 106.03, 106.04, 106.06, 106.07, 106.11, 106.141, 106.1475, 106.22, 106.23, 106.24, 106.25, 106.26, 106.29, 106.33, 106.35, 119.01, 119.041, 119.05, 119.09, 120.55, 193.505, 196.1997, 196.1998, 215.20, 253.025, 253.027, 257.01, 257.02, 257.031, 257.04, 257.05, 257.12, 257.14, 257.15, 257.16, 257.171, 257.171, 257.172, 257.18, 257.191, 257.192, 257.193, 257.195, 257.22, 257.23, 257.24, 257.30, 257.34, 257.35, 257.36, 257.37, 257.375, 257.41, 257.42, 258.007, 258.501, 259.035, 259.037, 260.0142, 265.283, 265.284, 265.286, 265.2861, 265.2862, 265.2865, 265.603, 265.606, 265.608, 265.609, 265.701, 265.702, 267.021, 267.031, 267.061, 267.0612, 267.0617, 267.0619, 267.062, 267.071, 267.072, 267.0731, 267.074, 267.0743, 267.075, 267.081, 267.11, 267.115, 267.12, 267.13, 267.135, 267.14, 267.16, 267.161, 267.17, 267.173, 286.001, 380.06, 380.061, 380.285, 403.941, 403.9411, 413.011, 445.004, 468.401, 561.01, 872.02, 872.05, 943.1728, 1004.51, 1004.52, 1004.94, and 1013.64.

This bill creates the following section of the Florida Statutes: 257.015.

This bill repeals the following sections of the Florida Statutes: 265.51, 265.52, 265.53, 265.54, 265.55, and 265.56.

II. Present Situation:

Governmental Structure – Executive Branch

A. General Provisions

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government. Section 20.02, F.S., states:

...The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute. A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the

powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.

Section 20.02, F.S., requires agencies that compose the executive branch to be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch. The principal unit of the department is the division, which may be further subdivided into bureaus. A bureau may be further divided into "sections" and "subsections." Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the standard organizational structure for executive branch departments that is established in that subsection.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

B. Reorganization – General Provision

Section 20.02(3), F.S., contemplates the regular review of agency organizational structures to maintain agency efficiency:

Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Management and coordination of state services is to be improved and overlapping activities eliminated. Further, s. 20.02(4), F.S., requires departments to be organized along functional or program lines.

Structure and Responsibilities of Department of State

The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. In FY 2003-04, DOS had 491 positions and a budget of \$108.8 million.

The Department of State is charged with the responsibility for:

- Serving as the official custodian of records;
- Administering and enforcing the state election laws;
- Filing acts and papers of the Legislature and county ordinances;
- Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- Issuing commissions to all elected and appointed officials;
- Maintaining financial disclosures for all constitutional and state officers and specified employees;
- Qualifying all federal and state candidates;
- Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;
- Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage;
- Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;
- Providing library, records management, and archival services at the state and local level; and,

- Enhancing and coordinating foreign affairs and diplomacy fostering global relationships for Florida.

The Division of Corporations is a ministerial filing agency that serves as the statewide central repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks. The division has two bureaus: Commercial Recording and Commercial Information Services. The division has 157 FTE and division funding of almost \$12 million in FY 2003-04.

The Division of Cultural Affairs is made up of the Office of the Director and Bureau of Grants Services. The division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida. There are 19 FTEs in the division. Funding for FY 2003-04 was almost \$7.1 million.

The Division of Elections is diverse and oversees many different functions. The division is comprised of the Director's office and three bureaus: Election Records; Voting System Certification; and Administrative Code and Weekly. There are 45 FTE and division funding in FY 2003-04 was \$10.9 million.

The Division of Elections administers and enforces the state election laws; files acts and papers of the Legislature and county ordinances; files all rules and regulations contained in the Florida Administrative Code; publishes and distributes proposed rules and regulations in the Florida Administrative Weekly for state agencies; issues formal advisory opinions; oversees the Florida Voter Registration Act; issues commissions to all elected and appointed officials; maintains financial disclosures for all constitutional and state officers and specified employees; and qualifies all federal and state candidates.

The Division of Historical Resources is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage. The responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). The division is comprised of the Director's office and three bureaus: Archaeological Research, Historical Museums, and Historic Preservation. The division has 94 FTE and division funding in FY 2003-04 was \$17.9 million.

The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's state historic museums, promotion and administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program. Apart from the R.A. Gray Building where the Florida Museum of History and the division offices are housed, 63 other properties are assigned (leased) to the division to manage on behalf

of the state. Only five of those are directly managed by the division, two more are not maintained by the division but the division has responsibility for maintaining exhibits, and the remainder are subleased to other entities.

Division of Library and Information Services provides library, records management, and archival services at the state and local level. Structurally, the division administers these services through three bureaus: Archives and Records Management, Library and Network Services, and Library Development. The division provides direct library services to state government, management services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of the people of Florida. The division has 106 FTE with an appropriation of approximately \$37.8 million with approximately 80 percent of the funds being used for grants.

Creating Opportunities for Quality Communities Workshops

Six regional workshops were held in August and September 2003 by the Department of State and the Department of Community Affairs to discuss the merger of the two departments and the effectiveness of the structure of the Department of State. These meetings were held, in part, in response to legislative proviso in the 2003 Appropriations Act that directed the Department of State to evaluate its programs, functions, and activities. A report was required to be prepared and submitted to the Governor and the Legislature containing current and proposed organizational overviews of the Department of State and recommending statutory and budgetary changes for achieving efficiencies in management and operation, improving service delivery to the public and ensuring compliance with federal and state laws.

III. Effect of Proposed Changes:

The bill amends s. 20.04, F.S., to permit the Department of State (department) to have an internal structure different from that required for other state agencies. The principal policy and program development unit of the department is to be the “office” which is to be headed by a director or other senior management position as determined by the Secretary.

The bill amends s. 20.10, F.S., to specifically provide for the Secretary to appoint an Assistant Secretary and deputy secretaries to serve at the pleasure of the Secretary. The Secretary is given broad delegation authority relating to responsibilities of deputies or directors as they relate to the management, policy formulation, and functioning of department programs.

The two deputy directors specifically authorized by the bill are the:

- Deputy Secretary for Cultural and Historical Programs who is responsible for programs assigned to the Cultural, Historical, and Grants Services “entity” which meet the Secretary’s responsibilities as the chief cultural officer, and
- Deputy Secretary for State Records who is responsible for those programs assigned to the State Library, Elections, and Records Custodian Services “entity” which meet the Secretary’s responsibilities as state records custodian.

The current six divisions of the department are replaced with the following eight offices: Art and History Programs Office; Historic Preservation Programs Office; Community Grants Services Office; State Recording Office; Elections Office; State Library, Archives, and Records Services Office; Administrative Support Services Office; and Central Computing Support Services Office.

The changes in law relating to the current Division of Corporations (State Recording) and Division of Elections (Elections) are changes in name to reflect the program office structure. Any changes in responsibilities for the State Recording Office that are different from the current statutory responsibilities of the Division of Corporations are not indicated in any statutory language.

The current laws relating to Cultural Affairs and Historic Preservation have all responsibilities and duties changed from any specific office to the department and from a director to the Secretary of State. There is no indication in law as to what newly created office will have what responsibilities or duties that are now assigned to the department and the Secretary. The newly created Community Grants Services, Art and History Programs, Historic Preservation, and Central Computing Support Services offices are devoid of statutory direction or responsibilities with two exceptions. The only responsibility specifically assigned to the Historic Preservation Programs Office is to staff the Florida Historical Commission.

The State Library, Archive and Records Services Office continues to have responsibility for operation of the library development, archives, information, and records management programs; however, many duties and responsibilities are now those of the department and not specifically given to the office as had been done with the Division of Library and Information Services. Responsibility for all library grants are removed from the office and given to the department with no indication of who is to have responsibility the grants. However, the State Librarian, in coordination with established advisory bodies of the department, is to recommend approval of library grants to the Secretary. In chapters of law other than Chapter 257, F.S., the responsibilities of the current Division of Library and Information Services is left intact with only a change of name to the Office being made.

Statutory revisions not related to the structural changes are proposed in the bill. Examples of those changes are as follows:

- Change in the criteria for and use of funds by recipients of Historical Museum Grants;
- Requirement for a post audit for cultural endowment grants and for a recordation of a restrictive covenant for cultural facility and regional cultural facility grantees.
- Requirement of bonds and requirement for repayment of grant awards under certain circumstances;
- Change in the size, composition, and selection process of the State Library Council;
- Change in the responsibilities of the State Librarian;
- Change in the name of the State Library to encompass the State Archives;
- Designation of the library entity for federal purposes;
- Removal of obsolete language in the areas of Folklife, Great Floridians, library grants, and cultural programs; and,
- Revision in the Florida Historical Commission to permit members to stay in office until a replacement is appointed.

The bill becomes law on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State has stated that there is no fiscal impact caused by the bill. There is no indication as to what, if any costs, would be incurred by the changes in the names of offices regarding letterhead or other expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legislation is inconsistent in provisions relating to responsibility for rulemaking and for whether the department or an office is responsible for certain functions.

Substantive changes are made in the legislation that are not related to the structural changes proposed; however, the title of the legislation reflects that changes are made to conform to such structural changes.

The legislation is not consistent in the degree of statutory authority and direction given to the various offices. Some have the same authority as prior to restructuring, i.e., Elections, while others are completely devoid of any structure other than a name.

The term “entity” is not defined in the areas of responsibility of the two deputy secretaries and is, therefore, unclear in its scope.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

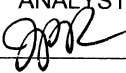

BILL: PCS/SB 1652

SPONSOR: Governmental Oversight and Productivity Committee and Senator Wise

SUBJECT: Governmental Reorganization; Department of State

DATE: April 16, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea 	Wilson 	GO	
2.			CP	
3.			EE	
4.			NR	
5.			ATD	
6.			AP	

I. Summary:

The proposed committee substitute permits the Secretary of State to appoint an assistant secretary and two deputy secretaries. The bill changes the name of the Division of Corporations to the "Division of State Recordings" and establishes the Bureau of Central Computing Support Services within the Division of Administration. The bill encourages the department to computerize its grant application and other processes. Further, it authorizes the department to cross train employees with grant expertise in the divisions with responsibility for grant awards and requires it to use uniform grant processes and forms, where appropriate. The bill explicitly prohibits modification of legislatively-established standards, the program, grant relationships and responsibilities established in law. Further, the bill explicitly states that statutorily required duties and responsibilities of programs assigned to divisions within the department are not to be changed without specific statutory revision.

The bill designates the Director of the Office of Tourism, Trade, and Economic Development to serve as the state protocol officer and authorizes that office to provide assistance and facilities to the Organization of American States in establishing and maintaining a regional headquarters in Florida. It also transfers the administration of the linkage institutes between postsecondary institutions in Florida and foreign countries to the Department of Education.

The bill requires local public libraries to enforce an Internet safety policy that provides for the installation of a technology protection measure, e.g., Internet filtering software, on public computers that blocks access to visual depictions that are obscene or child pornography, and additionally, in the case of minors, that are harmful to minors. The bill also provides that the technology protection measure must be disabled upon an adult's request to use the computer for bona fide research or other lawful purpose.

Numerous cross-reference changes are made in the bill to reflect the above-referenced changes.

The bill takes effect July 1, 2004.

This bill amends the following sections of the Florida Statutes: 14.2015, 15.16, 15.182, 20.10, 119.092, 205.023, 213.053, 213.50, 257.12, 157.192, 257.41, 265.2865, 265.606, 265.701, 265.702, 265.703, 267. 267.031, 267.0612, 267.0731, 267.14, 267.145, 267.16, 288.0251, 288.809, 288.816, 288.8175440.02, 440.05, 607.0401, 607.1506, 617.0401, 617.1506, 620.103, and 865.09.

The bill creates section 257.44 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 15.0913, 15.17, 15.19, 265.51, 265.52, 265.53, 265.54, 265.55, and 265.65.

II. Present Situation:

Governmental Structure – Executive Branch

A. General Provisions

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government. Section 20.02, F.S., states:

...The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute. A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting

outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.

Section 20.02, F.S., requires agencies that compose the executive branch to be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch. The principal unit of the department is the division, which may be further subdivided into bureaus. A bureau may be further divided into “sections” and “subsections.” Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the standard organizational structure for executive branch departments that is established in that subsection.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

B. Reorganization – General Provision

Section 20.02(3), F.S., contemplates the regular review of agency organizational structures to maintain agency efficiency:

Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Management and coordination of state services is to be improved and overlapping activities eliminated. Further, s. 20.02(4), F.S., requires departments to be organized along functional or program lines.

Structure and Responsibilities of Department of State:

The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. In FY 2003-04, DOS had 491 positions and a budget of \$108.8 million.

The Department of State is charged with the responsibility for:

- ▶ Serving as the official custodian of records;
- ▶ Administering and enforcing the state election laws;
- ▶ Filing acts and papers of the Legislature and county ordinances;
- ▶ Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- ▶ Issuing commissions to all elected and appointed officials;
- ▶ Maintaining financial disclosures for all constitutional and state officers and specified employees;
- ▶ Qualifying all federal and state candidates;
- ▶ Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;
- ▶ Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- ▶ Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage;
- ▶ Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;
- ▶ Providing library, records management, and archival services at the state and local level; and,
- ▶ Enhancing and coordinating foreign affairs and diplomacy fostering global relationships for Florida.

The Division of Corporations is a ministerial filing agency that serves as the statewide central repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks. The division has two bureaus: Commercial Recording and Commercial Information Services. The division has 157 FTE and division

funding of almost \$12 million in FY 2003-04.

The Division of Cultural Affairs is made up of the Office of the Director and Bureau of Grants Services. The division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida. There are 19 FTEs in the division. Funding for FY 2003-04 was almost \$7.1 million.

The Division of Elections is diverse and oversees many different functions. The division is comprised of the Director's office and three bureaus: Election Records; Voting System Certification; and Administrative Code and Weekly. There are 45 FTE and division funding in FY 2003-04 was \$10.9 million.

The Division of Elections administers and enforces the state election laws; files acts and papers of the Legislature and county ordinances; files all rules and regulations contained in the Florida Administrative Code; publishes and distributes proposed rules and regulations in the Florida Administrative Weekly for state agencies; issues formal advisory opinions; oversees the Florida Voter Registration Act; issues commissions to all elected and appointed officials; maintains financial disclosures for all constitutional and state officers and specified employees; and qualifies all federal and state candidates.

The Division of Historical Resources is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage. The responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). The division is comprised of the Director's office and three bureaus: Archaeological Research, Historical Museums, and Historic Preservation. The division has 94 FTE and division funding in FY 2003-04 was \$17.9 million.

The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's state historic museums, promotion and administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program. Apart from the R.A. Gray Building where the Florida Museum of History and the division offices are housed, 63 other properties are assigned (leased) to the division to manage on behalf of the state. Only five of those are directly managed by the division, two more are not maintained by the division but the division has responsibility for maintaining exhibits, and the remainder are subleased to other entities.

Division of Library and Information Services provides library, records management, and archival services at the state and local level. Structurally, the division administers these services through three bureaus: Archives and Records Management, Library and Network Services, and Library Development. The division provides direct library services to state government, management

services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of the people of Florida. The division has 106 FTE with an appropriation of approximately \$37.8 million with approximately 80 percent of the funds being used for grants.

Creating Opportunities for Quality Communities Workshops

Six regional workshops were held in August and September 2003 by the Department of State and the Department of Community Affairs to discuss the merger of the two departments and the effectiveness of the structure of the Department of State. These meetings were held, in part, in response to legislative proviso in the 2003 Appropriations Act that directed the Department of State to evaluate its programs, functions, and activities. A report was required to be prepared and submitted to the Governor and the Legislature containing current and proposed organizational overviews of the Department of State and recommending statutory and budgetary changes for achieving efficiencies in management and operation, improving service delivery to the public and ensuring compliance with federal and state laws.

An internal evaluation of the Department of State's executive management team put forward a baseline plan on an internal reorganization based on statutory functions: Custodian of State Records and Chief Cultural Officer.

At the November 18, 2003, House Commerce Committee meeting the two deputy secretaries of the Department of State presented the proposed structure for change within the Department of State. Their positions were already created by the Secretary of State; however, the structure below them needed legislative authorization and statutory change to implement.

Public Libraries

A. State regulation of Internet access in public libraries: Currently, Florida law does not require libraries to install and maintain software or equivalent technology that prohibits access to obscene material on library computers. Such technology is commonly called "blocking" or "filtering" software. Blocking or filtering software works in different ways. Some software programs block all Internet sites unless the administrator specifically permits access to that site. Other software programs maintain a continually updated list of sites and blocks those sites, or categories of sites, selected by the subscriber. Other filtering software works by filtering certain words and/or graphic depictions. Additionally, the software may be terminal-based, i.e., it is installed on each individual computer's hard drive, or it may be server-based, i.e., it is installed on the server and used by each computer on the server network.

According to the Department of State (DOS), as of March 2003, each of the library systems with countywide responsibilities in Florida's 67 counties has public access Internet Use Policies. These policies vary from county to county, but can be categorized as follows:

- 56 counties prohibit the display of obscene images;
- 5 counties prohibit the display of images offensive to others;

- 2 counties prohibit minors from accessing obscene images; and
- 4 counties do not prohibit the display of obscene images.

Twenty-eight counties filter access to obscene images on all computers and six counties filter computers used by children. Thirty-three counties do not filter Internet access.

B. Federal regulation of Internet access in public libraries: The Children's Internet Protection Act (CIPA) and Neighborhood Internet Protection Act were passed by Congress as part of H.R. 4577 on December 15, 2000. The CS was signed into law (Public Law 106-554) on December 21, 2000, and became effective April 20, 2001.

Under the new law, K-12 schools and libraries that receive E-rate discounts for Internet access¹ must block or filter all access to visual depictions (not text) that are obscene, child pornography, or in the case of minors, harmful to minors.² The blocking or filtering software may be disabled for adults for "bona fide research or other lawful purpose."³

The libraries must also adopt an Internet Safety Policy that addresses the following issues:

- Access by minors to inappropriate matter on the Internet;
- Safety and security of minors when using e-mail, chat rooms, and other forms of direct electronic communication;
- Unauthorized access, including hacking and other unlawful online activities by minors; and
- Measures designed to restrict minors' access to harmful materials.

The determination of what matter is inappropriate for minors is to be made by the school board, local educational agency, library, or other authority responsible for making the determination.⁴

Materials which are deemed harmful to minors are defined as:

- Any picture, image, graphic image file, or other visual depiction that:
 - Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
 - Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
 - Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.⁵

¹ Libraries that receive E-rate funds only for non-Internet-related "telecommunications services" need not comply with the act.

² The CIPA contains statutory references to the definitions of the terms "obscene" and "child pornography," and provides a definition for the phrase "harmful to minors." 47 U.S.C. s. 1703(3).

³ The act does not define this phrase.

⁴ 47 U.S.C. s. 254(1)(2).

⁵ 20 U.S.C. s. 3601; 20 U.S.C. 9134; 147 U.S.C. s. 254.

The CIPA also applies to libraries that do not receive E-rate funds, but do receive funds pursuant to the Elementary and Secondary Education Act of 1965 and the Museum and Library Services Act. The requirements for these libraries are substantially similar to those for libraries receiving E-rate funds.

Data provided by the Department of State for the 2003 E-Rate funding year reflect the following information related to Florida libraries: (a) 54.1 percent received E-rate funding that required CIPA compliance; (b) 11.8 percent received E-Rate funding that did not require CIPA compliance; (c) 23.5 percent did not apply for E-Rate funding; (d) 2.4 percent were denied E-Rate funding; and (e) the E-Rate funding status of 8.2 percent was unknown.

C. State Aid to Libraries Program: The Division of Library and Information Services within the DOS administers the State Aid to Libraries program, which provides operating grants to public libraries.⁶ Such grants may be no more than 25 percent of local funds expended to operate and maintain a public library. The Legislature annually appropriates funds for grants, which are prorated among eligible recipients. The division notes that with the exception of the first year of grants in 1962/63, annual appropriations have not been sufficient to meet the 25 percent match authorized in law.

According to the Division, the following libraries received state operating grant funds for FY 2003-2004: (a) libraries in all 67 counties; and (b) libraries in 11 municipalities. Libraries in 16 other municipalities were eligible for the grants, but did not apply.

III. Effect of Proposed Changes:

The bill amends s. 20.10, F.S., to specifically provide for the Secretary of State to appoint an Assistant Secretary and two deputy secretaries to serve at the pleasure of the Secretary. The two deputy directors specifically authorized by the bill are the:

- ▶ Deputy Secretary for Cultural and Historical Programs, who is directly responsible to the Secretary, has oversight of the Divisions of Historical Resources and Cultural Affairs, and performs other duties as assigned by the Secretary; and
- ▶ Deputy Secretary for State Records, who is directly responsible to the Secretary, has oversight of the Divisions of Library and Information Services, Elections, and Corporations, and performs other duties as assigned by the Secretary.

The bill renames the Division of Corporations as the Division of State Recordings to more accurately reflect the varied duties of the division and makes conforming changes in various sections of law. A Bureau of Central Computing Support Services is added to the Division of Administration. Direction is provided on computerizing departmental grants processes and, where appropriate, using uniform grant processes and forms. To the extent feasible, cross training grants staff is encouraged. The department is not to modify the standards or the program and grant relationships and responsibilities established in law. Changes in any statutorily required duties or responsibilities of any division or of the department are specifically prohibited without specific statutory authorization.

⁶ Sections 257.14 through 257.25, F.S.

The bill transfers certain international programs from the Department of State to the Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor by a type two transfer and makes conforming changes. The programs being transferred include: the provision of assistance and facilities to the Organization of American States, the state protocol officer functions, international development outreach activities in Latin America and the Caribbean Basin (FAVA/CA), the Florida Intergovernmental Relations Foundation, the Accord of the States of the Gulf of Mexico, the Florida/Korea Economic Cooperation Committee, Inc; and intergovernmental relations functions. Sections 15.17 and 15.19, F.S., relating to the provision of assistance and facilities to the Organization of American States and the performance of state protocol officer functions are repealed to conform to the transfer.

This bill also transfers the duty of administration for the linkage institutes between postsecondary institutions in this state and foreign countries from the Department of State to the Department of Education by a type two transfer and makes conforming changes.

Also, in the area of responsibility for the Division of Cultural Affairs, the bill designates the division as the state arts administrative agency; requires a post audit for cultural endowment recipients; requires a recordation of a restrictive covenant for cultural facility and regional cultural facility grantees, as well as a requirement for bonds and for repayment of grant awards under certain circumstances; and, creates a citizen support organization to assist the division with its cultural and arts programs. The bill also deletes obsolete language and repeals language relating to the authority of the department to enter into indemnity agreements.

The bill expands the current legislative intent relating to the preservation and protection of archaeological sites and objects of antiquity to include such assistance through the establishment of a network of regional public archaeology centers.

Additionally, in the area of historical resources the bill revises the Florida Historical Commission to permit members to stay in office until a replacement is appointed and removes obsolete language in the areas of Folklife and Great Floridians.

In the area of library and information services, the bill designates the Division of Library and Information Services as the state library administrative agency for federal purposes; changes the size, composition, and selection process of the State Library Council; modifies the responsibilities of the State Librarian; provides definitions for the chapter governing the Division of Library and Information Services; and creates a citizen support organization to assist the division with its library, archives, and records management programs. The bill also deletes obsolete language relating to library grants.

Additionally, the bill creates s. 257.44, F.S., effective October 1, 2004, to require local public libraries⁷ to enforce an Internet safety policy that provides for the installation of a technology protection measure on public computers that protects against access to visual depictions that are

⁷ The term "public library" is defined to mean a library that is open to the public and that is established or maintained by counties, municipalities, consolidated city-county governments, special districts, and special tax districts. The term "public library" does not include a library that is open to the public and that is established or maintained by a community college or state university.

obscene or child pornography, and in the case of minors, that are harmful to minors.⁸ The bill provides that the technology protection measure must be disabled upon an adult's request to use the computer for bona fide research or other lawful purpose, and requires the library to post a notice in a conspicuous location stating that the library has an Internet safety policy that is available for review.

Two enforcement mechanisms for the technology protection requirement are provided by the bill. The first mechanism permits a civil enforcement action to be brought by a resident, and requires the court to assess fines and reasonable attorney's fees and costs against libraries found not to have made reasonable efforts to comply with the requirements of the bill. Any fines collected under this provision are to be deposited in the Records Management Trust Fund within the Department of State. The second mechanism requires the Division of Library and Information Services to adopt rules that require a demonstration of compliance with the bill's requirements as a condition of a public library's receipt of state funding distributed pursuant to ch. 257, F.S.

Finally, in the area of responsibility of the Division of Corporations, two additional changes are made to delete s. 15.0913, F.S., an obsolete provision of law relating to requiring the division to be accountable for certain performance standards for Uniform Commercial Code documents and to amend s. 15.16, F.S., to remove a specific listing of chapters for which the Department of State may ask for electronic filing of records.

The bill becomes law on July 1, 2004, except that the section of the bill which creates s. 257.44, F.S., takes effect on October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires local public libraries to purchase technology protection measures that prohibit Internet access to visual depictions that are obscene, child pornography, and harmful to minors. The bill does not fund this requirement.

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. The bill is anticipated to have an insignificant fiscal impact, i.e., less than \$1.63 million, based on the DOS's estimate that this bill's fiscal impact is \$220,000 for the first year and \$560,000 for future years.⁹ Thus, the bill appears to be exempt from the constitutional mandate funding requirements.

⁸ The term "harmful to minors" is defined to mean any image that: (1) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (2) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals; and (3) taken as a whole, lack serious literary, artistic, political, or scientific value as to minors. This definition is identical to the definition of "harmful to minors" contained in the CIPA.

⁹ Article VII, s. 18(d) of the Florida Constitution, provides that laws having an "insignificant fiscal impact" are exempt from the constitutional mandate funding requirements. The term "insignificant fiscal impact" means the aggregate total of the impact is less than the average state population for a fiscal year times ten cents. In April 2001, the state population was

In the event that the fiscal impact of this bill would exceed \$1.63 million, the bill may be excepted from the constitutional mandate funding requirements, given its legislative finding that it fulfills an important state interest, if it is passed by two-thirds of the membership in both houses of the Legislature.¹⁰

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill also provides that trust funds associated with the programs related to the provision of assistance and facilities to the Organization of American States, state protocol officer functions, international development outreach activities in Latin America and the Caribbean basin, the Florida Intergovernmental Relations Foundation, and the intergovernmental relations function authorized by s. 288.816, F.S., remain with the Department of State, notwithstanding the provisions of s. 20.06(2), F.S.

The linkage institutes between postsecondary institutions in Florida and foreign countries that are authorized by s. 288.817, F.S., are transferred by a type two transfer from the Department of State to the Department of Education. The bill also provides that trust funds associated with the foregoing program remain with the Department of State, notwithstanding the provisions of s. 20.06(2), F.S.

D. Other Constitutional Issues:

The CIPA was enacted by Congress in 2000. As discussed in the “Present Situation” section, *supra*, the Act requires public libraries that receive specified federal funding to install technology protection measures that block visual depictions that are obscene or constitute child pornography, and in the case of minors, that are harmful to minors.

In 2002, the American Library Association and the American Civil Liberties Union filed suit against the federal government, challenging the constitutionality of CIPA. The Court for the Eastern District of Pennsylvania held that the CIPA’s mandatory filtering requirements violated the First Amendment of the U.S. Constitution because current filtering technology blocks not only illegal material, i.e., child pornography and obscenity, but also blocks constitutionally protected speech.¹¹

On June 23, 2003, the U.S. Supreme Court reversed, holding that the CIPA does not violate the First Amendment and does not impose an impermissible condition on libraries that received federal funding.¹² In a plurality opinion, Chief Justice Rehnquist found that Congress may attach conditions to federal funding in order to compel certain behavior so

16,331,739; thus, fiscal impacts less than \$1.63 million are deemed insignificant. See “2002 Intergovernmental Impact Report,” Florida Legislative Committee on Intergovernmental Relations, February 2003.

¹⁰ See Article VII, s. 18(a) of the Florida Constitution.

¹¹ 201 F. Supp. 2d 401 (E.D. Pa. 2002).

¹² *U.S. v. American Library Ass’n, Inc.*, 123 S.Ct. 2297 (2003).

long as that behavior is constitutional.^{13 14} The Chief Justice found Internet filtering to be constitutional behavior, given that the goal of libraries is not to provide “universal coverage” of all materials. He also found that libraries make content-based decisions when collecting materials.¹⁵ For example, most libraries exclude pornography from their collections. Moreover, any concerns over filtering software’s tendency to erroneously overblock access to constitutionally protect speech are alleviated by the fact that adult patrons may have the filtering software disabled.¹⁶ Accordingly, the Chief Justice held that libraries were likewise entitled to make content-based decisions regarding materials collected from the Internet.¹⁷

The bill’s requirement that Florida public libraries install technology protection measures is substantively identical to that contained in the CIPA. Accordingly, it appears the bill would withstand the constitutional challenges resolved by the U.S. Supreme Court in the *American Library Association* case.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will limit the type of Internet content that may be accessed by the public at county and municipal libraries. The bill will permit residents to bring enforcement actions in civil court against public libraries that fail to comply with the bill’s Internet Safety Policy requirements.

C. Government Sector Impact:

Cost associated with filtering software: The DOS has indicated that it is impossible to determine the precise fiscal impact of this bill because some libraries may have access to free filtering products provided by their Internet Service Provider, while others will have to purchase such products.

The DOS estimates that 133 library administrative units would be affected by the bill and that 74 of these units currently filter all or some of the unit’s computers. These libraries pay approximately \$340,000 per year for server based filtering. For the remaining 59 units that do not filter, the DOS estimates that it would cost these units approximately \$220,000 to comply with the bill if they installed server based filtering technology. Accordingly, the total annual recurring costs to libraries would be \$560,000. The DOS also indicates that these costs are based on utilization of Websense, a server based

¹³ Justices O’Connor, Scalia, and Thomas joined the plurality opinion drafted by Chief Justice Rehnquist. Justices Kennedy and Breyer concurred separately, and Justices Stevens, Souter, and Ginsburg dissented.

¹⁴ *Id.* at 2303.

¹⁵ *Id.* at 2304.

¹⁶ *Id.* at 2306.

¹⁷ *Id.*

filtering technology, and are exclusive of costs for servers and personnel to install and maintain the filtering products.

There appears to be a wide range of pricing for Internet filtering software. Server based technology appears more expensive than terminal based filtering technology that is installed individually on each computer. During the 2003 Legislative Session when SB 1250, a bill which required county and municipal libraries to install filtering technology, was considered, Kidsnet, Inc. indicated that its Internet filtering product called LibraryNet sold for \$12 per computer. The DOS indicated at that time approximately 2,293 public library computer units were not being filtered. Accordingly, if the LibraryNet product had been purchased the total cost for libraries not yet filtering would have been \$27,516.

Fines and attorney's fees and costs: Public libraries that fail to comply with the bill's Internet Safety Policy requirements are subject to civil enforcement suits by residents. If a library is found by the court to be in non-compliance, the court is required to order assessment of a fine of \$100 per day per library location beginning from the date that non-compliance was first noticed. Additionally, the court is required to award reasonable attorney's fees and costs to be paid to prevailing citizens by losing administrative units. The fiscal impact of the fines, fees, and costs is indeterminate as the number of public libraries that will fail to comply with the bill and that will be sued is unknown.

State funding: The bill provides that the head of each administrative unit must annually attest in writing, under penalty of perjury, that all public library locations within the unit are in compliance with the bill's Internet Safety Policy requirements as a condition of the receipt of state funds distributed under ch. 257, F.S. Thus, public libraries failing to comply with the bill will not be eligible for funds provided by the Division of Library and Information Services within the DOS through the State Aid to Libraries Program in ch. 257, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

A bill to be entitled
An act relating to the Department of State;
amending s. 20.10, F.S.; reorganizing the
department; providing for an Assistant
Secretary of State and deputy secretaries;
renaming the Division of Corporations;
providing for a Bureau of Central Computing
Support Services; providing direction relating
to departmental grants processes and programs;
prohibiting changes to statutorily required
responsibilities and duties without specific
statutory revision; amending ss. 119.092,
205.023, 213.053, 213.50, 440.02, 440.05,
607.0401, 607.1506, 617.0401, 617.1506,
620.103, and 865.09, F.S., to conform; amending
s. 14.2015, F.S.; providing for the performance
of state protocol officer functions and the
provision of assistance and facilities to the
Organization of American States by the Officer
of Tourism, Trade, and Economic Development;
amending s. 15.16, F.S.; deleting specific
statutory citations for required filings of
records that may be required to be filed
electronically; amending s. 15.182, F.S.;
providing for notification of the Office of
Tourism, Trade, and Economic Development
regarding international travel by certain
cultural arts organizations; creating s.
257.015, F.S.; providing definitions; amending
s. 257.02, F.S.; revising the membership of the
State Library Council; increasing the size of

DATE: 4-16-04
TIME: 1:55 P.M.
Don Wice

GOVERNMENT OFFICIAL
IN PRESENCE

1 the council; providing criteria for membership
2 and a selection process; providing for election
3 of officers; amending s. 257.031, F.S.;
4 deleting a reference to the State Library
5 Council and provisions for officers; adding
6 responsibilities for the State Librarian;
7 amending s. 257.12, F.S.; designating the
8 Division of Library and Information Services as
9 the state library administrative agency;
10 amending s. 257.192, F.S.; correcting
11 provisions; amending s. 257.41, F.S.; deleting
12 a requirement for issuance of a certificate to
13 library cooperatives; creating s. 257.43, F.S.;
14 providing for the establishment of a citizens
15 support organization for certain purposes;
16 providing for use of administrative services
17 and property; requiring an annual audit;
18 creating s. 257.44, F.S.; defining terms;
19 requiring public libraries to provide
20 technology that protects against Internet
21 access to specified proscribed visual
22 depictions; allowing adults to request
23 disablement of the technology for specified
24 purposes; requiring a public library to post
25 notice of its Internet safety policy; providing
26 for the assessment of a fine and attorney's
27 fees and costs in connection with a violation
28 by a public library; directing the Division of
29 Library and Information Services within the
30 Department of State to adopt rules requiring a
31 written attestation under penalty of perjury of

1 compliance as a condition of state funding;
2 providing that no cause of action arises for a
3 violation by a public library except as
4 provided; providing a finding of important
5 state interest; amending s. 265.284, F.S.;
6 designating the Division of Cultural Affairs as
7 the state arts administrative agency; deleting
8 obsolete provisions; amending s. 265.2865,
9 F.S.; deleting obsolete provisions; amending s.
10 265.606, F.S.; requiring post audits; amending
11 ss. 265.701 and 265.702, F.S.; requiring
12 recordation of covenants; requiring that a
13 facility continue to be used as a cultural
14 facility for a specified period; providing
15 penalties; creating s. 265.703, F.S.; providing
16 for the establishment of a citizens support
17 organization for certain purposes; providing
18 for the use of administrative services and
19 property; requiring an annual audit; amending
20 s. 267.0612, F.S.; providing for continuation
21 as a member of the Florida Historical
22 Commission until a replacement is appointed;
23 amending s. 267.0731, F.S.; deleting obsolete
24 provisions; repealing s. 267.16(3), F.S.;
25 deleting obsolete provisions; amending ss.
26 288.0251, 288.809, and 288.816, F.S., relating
27 to international development outreach
28 activities in Latin America and the Caribbean
29 Basin, the Florida Intergovernmental Relations
30 Foundation, and intergovernmental relations, to
31 conform; amending s. 288.8175, F.S.; redefining

1 the term "department" for purposes of linkage
2 institutes between postsecondary institutions
3 in this state and foreign countries;
4 transferring the provision of assistance and
5 facilities to the Organization of American
6 States, state protocol officer functions,
7 international development outreach activities
8 in Latin America and the Caribbean Basin, the
9 Florida Intergovernmental Relations Foundation,
10 and intergovernmental relations functions by a
11 type two transfer from the Department of State
12 to the Executive Office of the Governor;
13 excluding the transfer of certain trust funds;
14 transferring linkage institutes between
15 postsecondary institutions in this state and
16 foreign countries by a type two transfer from
17 the Department of State to the Department of
18 Education; excluding the transfer of certain
19 trust funds; repealing s. 15.0913, F.S.,
20 relating to performance standards for Uniform
21 Commercial Code documents; repealing ss. 15.17
22 and 15.19, F.S., relating to the provision of
23 assistance and facilities to the Organization
24 of American States and the performance of state
25 protocol officer functions; repealing ss.
26 265.51, 265.52, 265.53, 265.54, 265.55, and
27 265.56, F.S., relating to the authority of the
28 department to enter indemnity agreements;
29 providing for severability; providing an
30 effective date.
31

1 Be It Enacted by the Legislature of the State of Florida:

2
3 Section 1. Section 20.10, Florida Statutes, is amended
4 to read:

5 20.10 Department of State.--There is created a
6 Department of State.

7 (1) The head of the Department of State is the
8 Secretary of State. The Secretary of State shall be appointed
9 by the Governor, subject to confirmation by the Senate, and
10 shall serve at the pleasure of the Governor. The Secretary of
11 State shall perform the functions conferred by the State
12 Constitution upon the custodian of state records.

13 (2) The Secretary of State shall appoint an assistant
14 secretary and two deputy secretaries, who shall serve at the
15 pleasure of the secretary:

16 (a) The Assistant Secretary of State shall act in the
17 absence of the secretary, is directly responsible to the
18 secretary, and shall perform such duties as are assigned by
19 the secretary.

20 (b) The Deputy Secretary for Cultural and Historical
21 Programs is directly responsible to the secretary, shall have
22 oversight of the Division of Historical Resources and the
23 Division of Cultural Affairs, and shall perform such other
24 duties as assigned by the secretary.

25 (c) The Deputy Secretary for State Records is directly
26 responsible to the secretary, shall have oversight of the
27 Division of Elections, Division of State Recordings, and the
28 Division of Library and Information Services, and shall
29 perform such other duties as assigned by the secretary.

30 (3) ~~(2)~~ The following divisions of the Department of
31 State are established:

1 (a) Division of Elections.

2 (b) Division of Historical Resources.

3 (c) Division of State Recordings Corporations.

4 (d) Division of Library and Information Services.

5 (e) Division of Cultural Affairs.

6 (f) Division of Administration.

7 1. Bureau of Central Computing Support Services.

8 (4) The department is encouraged to computerize its
9 grant application and other processes. The department, to the
10 extent feasible, may cross train employees with grant
11 expertise in the divisions with responsibility for grant
12 awards and shall use uniform grant processes and forms, where
13 appropriate. The department shall not modify the standards or
14 the program and grant relationships and responsibilities
15 established in law.

16 (5) Statutorily required duties and responsibilities
17 of and programs assigned to divisions within the department or
18 those required of or assigned to the department shall not be
19 changed without specific statutory revision.

20 (6) (3) The Department of State may adopt rules
21 pursuant to ss. 120.536(1) and 120.54 to administer the
22 provisions of law conferring duties upon the department.

23 Section 2. Subsections (10) and (11) are added to
24 section 14.2015, Florida Statutes, to read:

25 14.2015 Office of Tourism, Trade, and Economic
26 Development; creation; powers and duties.--

27 (10) The director of the Office of Tourism, Trade, and
28 Economic Development shall serve as the state protocol
29 officer. In consultation with the Governor and other
30 governmental officials, the director of the Office of Tourism,
31

1 Trade, and Economic Development shall develop, maintain,
2 publish, and distribute the state protocol manual.

3 (11) The Legislature authorizes the Office of Tourism,
4 Trade, and Economic Development to provide assistance and
5 facilities to the Organization of American States in
6 establishing and maintaining a regional headquarters in this
7 state.

8 Section 3. Subsection (3) of section 15.16, Florida
9 Statutes, is amended to read:

10 15.16 Reproduction of records; admissibility in
11 evidence; electronic receipt and transmission of records;
12 certification; acknowledgment.--

13 (3) The Department of State may cause to be received
14 electronically any records that are required to be filed with
15 it ~~pursuant-to-chapter-55,-chapter-606,-chapter-607,-chapter~~
16 ~~608,-chapter-617,-chapter-620,-chapter-621,-chapter-679,-~~
17 ~~chapter-713,-or-chapter-865,~~ through facsimile or other
18 electronic transfers, for the purpose of filing such
19 records. The originals of all such electronically transmitted
20 records must be executed in the manner provided in paragraph
21 (5) (b). The receipt of such electronic transfer constitutes
22 delivery to the department as required by law.

23 Section 4. Section 15.182, Florida Statutes, is
24 amended to read:

25 15.182 International travel by state-funded musical,
26 cultural, or artistic organizations; notification to Office of
27 Tourism, Trade, and Economic Development ~~Department-of~~
28 ~~State.--~~

29 (1) If a musical, cultural, or artistic organization
30 that receives state funding is traveling internationally for a
31 presentation, performance, or other significant public

1 viewing, including an organization associated with a college
2 or university, such organization shall notify the Office of
3 Tourism, Trade, and Economic Development Department-of-State
4 of its intentions to travel, together with the date, time, and
5 location of each appearance. ~~It-is-the-desire-of-the~~
6 ~~Legislature-that-such-cultural-exchanges-be-coordinated-with~~
7 ~~the-state---s-economic-development-goals---The-Secretary-of~~
8 ~~State-shall-notify-Enterprise-Florida,-Inc.-,-of-the-intended~~
9 ~~travel-schedule-of-all-such-organizations,-including,-but-not~~
10 ~~limited-to,-symphonies,-troupes,-musical-performing-groups,-~~
11 ~~traveling-exhibitions-sponsored-by-museums,-and-performance~~
12 ~~artists-~~

13 (2) The Office of Tourism, Trade, and Economic
14 Development Department-of-State, in conjunction with
15 Enterprise Florida, Inc., shall act as an intermediary between
16 performing musical, cultural, and artistic organizations and
17 Florida businesses to encourage and coordinate joint
18 undertakings. Such coordination may include, but is not
19 limited to, encouraging business and industry to sponsor
20 cultural events, assistance with travel of such organizations,
21 and coordinating travel schedules of cultural performance
22 groups and international trade missions.

23 (3) An organization shall provide the notification to
24 the Department of State required by this section at least 30
25 days prior to the date the international travel is to commence
26 or, when an intention to travel internationally is not formed
27 at least 30 days in advance of the date the travel is to
28 commence, as soon as feasible after forming such travel
29 intention. The Department of State shall take an active role
30 in informing such groups of the responsibility to notify the
31 department of travel intentions.

1 Section 5. Section 119.092, Florida Statutes, is
2 amended to read:

3 119.092 Registration by federal employer's
4 registration number.--Each state agency which registers or
5 licenses corporations, partnerships, or other business
6 entities shall include, by July 1, 1978, within its numbering
7 system, the federal employer's identification number of each
8 corporation, partnership, or other business entity registered
9 or licensed by it. Any state agency may maintain a dual
10 numbering system in which the federal employer's
11 identification number or the state agency's own number is the
12 primary identification number; however, the records of such
13 state agency shall be designed in such a way that the record
14 of any business entity is subject to direct location by the
15 federal employer's identification number. The Department of
16 State shall keep a registry of federal employer's
17 identification numbers of all business entities, registered
18 with the Division of State Recordings Corporations, which
19 registry of numbers may be used by all state agencies.

20 Section 6. Subsection (1) of section 205.023, Florida
21 Statutes, is amended to read:

22 205.023 Requirement to report status of fictitious
23 name registration.--As a prerequisite to receiving a local
24 occupational license under this chapter or transferring a
25 business license under s. 205.033(2) or s. 205.043(2), the
26 applicant or new owner must present to the county or
27 municipality that has jurisdiction to issue or transfer the
28 license either:

29 (1) A copy of the applicant's or new owner's current
30 fictitious name registration, issued by the Division of State
31 Recordings Corporations of the Department of State; or

1 Section 7. Paragraph (b) of subsection (7) and
2 subsection (14) of section 213.053, Florida Statutes, are
3 amended to read:

4 213.053 Confidentiality and information sharing.--

5 (7) Notwithstanding any other provision of this
6 section, the department may provide:

7 (b) Names, addresses, and dates of commencement of
8 business activities of corporations to the Division of State
9 Recordings ~~Corporations~~ of the Department of State in the
10 conduct of its official duties.

11
12 Disclosure of information under this subsection shall be
13 pursuant to a written agreement between the executive director
14 and the agency. Such agencies, governmental or
15 nongovernmental, shall be bound by the same requirements of
16 confidentiality as the Department of Revenue. Breach of
17 confidentiality is a misdemeanor of the first degree,
18 punishable as provided by s. 775.082 or s. 775.083.

19 (14) (a) Notwithstanding any other provision of this
20 section, the department shall, subject to the safeguards
21 specified in paragraph (c), disclose to the Division of State
22 Recordings ~~Corporations~~ of the Department of State the name,
23 address, federal employer identification number, and duration
24 of tax filings with this state of all corporate or partnership
25 entities which are not on file or have a dissolved status with
26 the Division of State Recordings ~~Corporations~~ and which have
27 filed tax returns pursuant to either chapter 199 or chapter
28 220.

29 (b) The Division of State Recordings ~~Corporations~~
30 shall use such information only in the pursuit of its official
31 duties relative to nonqualified foreign or dissolved

1 corporations in the recovery of fees and penalties due and
2 owing the state.

3 (c) All information exchanged between the Division of
4 State Recordings Corporations and the department shall be
5 subject to the same requirements of confidentiality as the
6 Department of Revenue.

7 Section 8. Subsection (2) of section 213.50, Florida
8 Statutes, is amended to read:

9 213.50 Failure to comply; revocation of corporate
10 charter; refusal to reinstate charter.--

11 (2) A request for reinstatement of a corporate charter
12 may not be granted by the Division of State Recordings
13 Corporations of the Department of State if an outstanding tax
14 warrant has existed for that corporation for more than 3
15 consecutive months.

16 Section 9. Section 257.015, Florida Statutes, is
17 created to read:

18 257.015 Definitions.--As used in this chapter, the
19 term:

20 (1) "Department" means the Department of State.

21 (2) "Division" means the Division of Library and
22 Information Services of the Department of State.

23 (3) "Secretary" means the Secretary of State.

24 (4) "State librarian" means the position to which a
25 person is appointed by the secretary pursuant to s. 257.031 as
26 the director of the Division of Library and Information
27 Services.

28 Section 10. Subsections (1) and (3) of section 257.02,
29 Florida Statutes, are amended, and subsection (4) is added to
30 that section, to read:

31 257.02 State Library Council.--

1 (1) There shall be a State Library Council to advise
2 and assist the Division of Library and Information Services on
3 its programs and activities. The council shall consist of
4 nine ~~seven~~ members who shall be appointed by the Secretary of
5 State. Of the nine members, at least one must represent a
6 Florida library professional association, at least one must
7 represent a Florida archive professional association, at least
8 one must represent a Florida records management professional
9 association, and at least one must be a person who is not, and
10 has never been, employed in a library or in teaching library
11 science courses. ~~At-least-one-member-of-the-council-must-be-a~~
12 ~~person-who-is-60-years-of-age-or-older,-and-at-least-one~~
13 ~~member-of-the-council-must-be-a-person-who-is-not,-and-has~~
14 ~~never-been,-employed-in-a-library-or-in-teaching-library~~
15 ~~science-courses.~~ Members shall be appointed for 4-year terms.
16 A vacancy on the council shall be filled for the period of the
17 unexpired term. No person may be appointed to serve more than
18 two consecutive terms as a member of the council. The
19 Secretary of State may remove from office any council member
20 for malfeasance, misfeasance, neglect of duty, incompetence,
21 permanent inability to perform official duties, or pleading
22 guilty or nolo contendere to, or being found guilty of, a
23 felony. ~~In-addition-to,-and-at-the-request-of,-the-members-of~~
24 ~~the-council-appointed-by-the-Secretary-of-State,-the~~
25 ~~president-elect-of-the-Florida-Library-Association-may-serve~~
26 ~~as-a-member-of-the-council-in-a-nonvoting-capacity-during-his~~
27 ~~or-her-term-as-president-elect.~~
28 (3) The Secretary of State may, in making
29 appointments, consult Florida's library, archival, and records
30 management community, ~~the-Florida-Library-Association~~ and
31 related statewide associations and organizations for

1 suggestions as to persons having special knowledge and
2 interest concerning libraries.

3 (4) The officers of the State Library Council shall be
4 a chair, elected from the members thereof, and the State
5 Librarian, who shall serve without voting rights as secretary
6 of the council.

7 Section 11. Section 257.031, Florida Statutes, is
8 amended to read:

9 257.031 State Librarian Organization-of-council;
10 appointment and duties of-State-Librarian.--

11 ~~(1) The-officers-of-the-State-Library-Council-shall-be~~
12 ~~a-chair,-elected-from-the-members-thereof,-and-the-State~~
13 ~~Librarian,-who-shall-serve-without-voting-rights-as-secretary~~
14 ~~of-the-council:-~~ The State Librarian shall be appointed by the
15 Secretary of State, shall have completed a library school
16 program accredited by the American Library Association, and
17 shall serve as the director of the Division of Library and
18 Information Services of the Department of State. The
19 Secretary of State may, in making the appointment of State
20 Librarian, consult the members of the State Library Council.

21 (2) The State Librarian shall:

22 (a) Keep a record of the proceedings of the State
23 Library Council;

24 (b) Keep an accurate account of the financial
25 transactions of the division;

26 (c) Have charge of the work of the division in
27 organizing new libraries and improving those already
28 established; and

29 (d) In general, perform such duties as may, from time
30 to time, be assigned to him or her by the Secretary of State;
31 and

1 (e) Manage operations of the programs assigned by law
2 to the division.

3 Section 12. Section 257.12, Florida Statutes, is
4 amended to read:

5 257.12 Division of Library and Information Services
6 authorized to accept and expend federal funds.--

7 (1) The Division of Library and Information Services
8 of the Department of State is designated as the state library
9 administrative agency authorized to accept, receive,
10 administer, and expend any moneys, materials, or any other aid
11 granted, appropriated, or made available by the United States
12 or any of its agencies for the purpose of giving aid to
13 libraries and providing educational library service in the
14 state.

15 Section 13. Section 257.192, Florida Statutes, is
16 amended to read:

17 257.192 Program grants.--The Division of Library and
18 Information Services is authorized to accept and administer
19 appropriations for library program grants and to make such
20 grants in accordance with the Florida long-range plan program
21 for library services.

22 Section 14. Subsection (2) of section 257.41, Florida
23 Statutes, is amended to read:

24 257.41 Library cooperatives; organization; receipt of
25 state moneys.--

26 (2) The Division of Library and Information Services
27 of the Department of State shall establish operating standards
28 and rules under which a library cooperative is eligible to
29 receive state moneys. ~~The division shall issue a certificate~~
30 ~~to each library cooperative that meets the standards and rules~~
31 ~~established under this subsection.~~

1 Section 15. Section 257.43, Florida Statutes, is
2 created to read:

3 257.43 Citizen support organization; use of state
4 administrative services and property; audit.--

5 (1) CITIZEN SUPPORT ORGANIZATION.--The division may
6 support the establishment of a citizen support organization to
7 provide assistance, funding, and promotional support for the
8 library, archives, and records management programs of the
9 division. For the purposes of this section, the term "citizen
10 support organization" means an organization that is:

11 (a) A Florida corporation not for profit incorporated
12 under the provisions of chapter 617 and approved by the
13 Department of State;

14 (b) Organized and operated to conduct programs and
15 activities; raise funds; request and receive grants, gifts,
16 and bequests of money; acquire, receive, hold, invest, and
17 administer, in its own name, securities, funds, objects of
18 value, or other property, real or personal; and make
19 expenditures to or for the direct or indirect benefit of the
20 division or individual program units of the division;

21 (c) Determined by the division to be consistent with
22 the goals of the division and in the best interests of the
23 state; and

24 (d) Approved in writing by the division to operate for
25 the direct or indirect benefit of the division. Such approval
26 shall be given in a letter of agreement from the division.

27 (2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.--

28 (a) The division may fix and collect charges for the
29 rental of facilities and properties managed by the division
30 and may permit, without charge, appropriate use of
31 administrative services, property, and facilities of the

1 division by a citizen support organization, subject to the
2 provisions of this section. Such use must be directly in
3 keeping with the approved purposes of the citizen support
4 organization and may not be made at times or places that would
5 unreasonably interfere with opportunities for the general
6 public to use such facilities for established purposes. Any
7 moneys received from rentals of facilities and properties
8 managed by the division may be held in the operating trust
9 fund of the division or in a separate depository account in
10 the name of the citizen support organization and subject to
11 the provisions of the letter of agreement with the division.

12 (b) The division may prescribe by rule any condition
13 with which a citizen support organization shall comply in
14 order to use division administrative services, property, or
15 facilities.

16 (c) The division shall not permit the use of any
17 administrative services, property, or facilities of the state
18 by a citizen support organization which does not provide equal
19 membership and employment opportunities to all persons
20 regardless of race, color, religion, sex, age, or national
21 origin.

22 (3) ANNUAL AUDIT.--The citizen support organization
23 shall provide for an annual financial audit in accordance with
24 s. 215.981.

25 Section 16. Effective October 1, 2004, section 257.44,
26 Florida Statutes, is created to read:

27 257.44 Internet screening in public libraries.--

28 (1) As used in this section, the term:

29 (a) "Administrative unit" means the entity designated
30 by a local government body as responsible for the
31

1 administration of all public library locations established or
2 maintained by that local government body.

3 (b) "Child pornography" has the same meaning as in
4 section 847.001, Florida Statutes.

5 (c) "Harmful to minors" means any picture, image,
6 graphic image file, or other visual depiction that:

7 1. Taken as a whole and with respect to minors,
8 appeals to a prurient interest in nudity, sex, or excretion;

9 2. Depicts, describes, or represents, in a patently
10 offensive way with respect to what is suitable for minors, an
11 actual or simulated sexual act or sexual contact, an actual or
12 simulated normal or perverted sexual act, or a lewd exhibition
13 of the genitals; and

14 3. Taken as a whole, lacks serious literary, artistic,
15 political, or scientific value as to minors.

16 (d) "Minor" means an individual who is younger than 18
17 years of age.

18 (e) "Obscene" has the same meaning as in section
19 847.001, Florida Statutes.

20 (f) "Public computer" means a computer that is made
21 available to the public and that has Internet access.

22 (g) "Public library" means any library that is open to
23 the public and that is established or maintained by one or
24 more of the following local government bodies in this state:
25 county; municipality; consolidated city-county government;
26 special district; or special tax district. The term "public
27 library" does not include a library that is open to the public
28 and that is established or maintained by a community college
29 or state university.

1 (h) "Reasonable efforts" means the public library, as
2 required by subsection (2), in its ordinary course of
3 business:

- 4 1. Is posting its Internet safety policy;
5 2. Is using a technology protection measure on all
6 public computers; and
7 3. Disables the technology protection measure upon an
8 adult's request to use the computer for bona fide research or
9 other lawful purpose.

10 (i) "Technology protection measure" means software or
11 equivalent technology that blocks or filters Internet access
12 to the visual depictions that are proscribed under subsection
13 (2).

14 (2) (a) Each public library shall enforce an Internet
15 safety policy that provides for:

- 16 1. Installation and operation of a technology
17 protection measure on all public computers in the public
18 library which protects against access through such computers
19 by adults to visual depictions that are obscene or child
20 pornography and by minors to visual depictions that are
21 obscene, child pornography, or harmful to minors; and
22 2. Disablement of the technology protection measure by
23 an employee of the public library upon an adult's request to
24 use the computer for bona fide research or other lawful
25 purpose.

26 (b) Each public library shall post a notice in a
27 conspicuous area of the public library which indicates that an
28 Internet safety policy has been adopted and informs the public
29 that the Internet safety policy is available for review at
30 each public library.

1 (c) A public library may not maintain a list of the
2 names of adults who request that the technology protection
3 measure be disabled under this subsection.

4 (3)(a) In the event a public library knowingly fails
5 to make reasonable efforts to comply with subsection (2), a
6 resident of this state is authorized to seek enforcement as
7 provided in this subsection. Within 45 days after the
8 occurrence of a public library's alleged failure to make
9 reasonable efforts, the resident shall first mail to the head
10 of the applicable administrative unit a notice of intended
11 civil action for enforcement, which shall identify each public
12 library location implicated and shall specify the facts and
13 circumstances alleged to constitute a violation of subsection
14 (2). Within 45 days after the receipt of such notice, the head
15 of the administrative unit shall mail to the resident who
16 provided the notice a written response specifying the efforts,
17 if any, each public library location identified in the notice
18 is making to comply with the requirements of subsection (2).
19 All mailings required by this paragraph shall be certified
20 with return receipt requested.

21 (b) If the resident does not receive the written
22 response required by paragraph (a) within 60 days after
23 receipt of the notice by the head of the administrative unit,
24 or if the written response fails to indicate that the public
25 library is making reasonable efforts to comply with subsection
26 (2), the resident may bring a civil cause of action in the
27 circuit court of the county in which the administrative unit
28 is located to seek injunctive relief to enforce compliance
29 with subsection (2). In connection with such enforcement, the
30 court shall impose a civil fine upon the administrative unit
31 in the amount of \$100 per day per public library location that

1 is found to have not made reasonable efforts to comply with
2 subsection (2). Accrual of the fine shall be for the period
3 between the date that the head of the administrative unit
4 received notice of the intended civil action for enforcement
5 and the date upon which the public library location begins
6 making reasonable efforts to comply with subsection (2).

7 (c) In any civil action brought pursuant to paragraph
8 (b), attorney's fees and costs awards shall be as follows:

9 1. An administrative unit that is fined pursuant to
10 paragraph (b) shall be ordered to pay reasonable attorney's
11 fees and costs to a prevailing resident; or

12 2. A resident shall be ordered to pay reasonable
13 attorney's fees and costs to an administrative unit if the
14 court finds that the filing of the action was in bad faith or
15 frivolous.

16 (d) The clerk of the circuit court shall act as the
17 depository for all moneys collected pursuant to this
18 subsection. The clerk may retain a service charge of \$1 for
19 each payment received under this subsection. On a monthly
20 basis, the clerk shall transfer the moneys collected pursuant
21 to this subsection to the Department of Revenue for deposit in
22 the Records Management Trust Fund within the Department of
23 State.

24 (4) The Division of Library and Information Services
25 within the Department of State shall adopt rules pursuant to
26 sections 120.536(1) and 120.54, Florida Statutes, which
27 require the head of each administrative unit to annually
28 attest in writing, under penalty of perjury, that all public
29 library locations within the administrative unit are in
30 compliance with subsection (2), as a condition of the receipt
31

1 of any state funds distributed under chapter 257, Florida
2 Statutes.

3 (5) No cause of action, except that authorized in
4 subsection (3), shall arise in favor of any person due to a
5 public library's failure to comply with subsection (2).

6 Section 17. In accordance with Section 18, Article VII
7 of the State Constitution, the Legislature finds that the
8 installation and operation by public libraries of technology
9 protection measures that protect against access by adults to
10 visual depictions that are obscene or child pornography and by
11 minors to visual depictions that are obscene, child
12 pornography, or harmful to minors, as required by section
13 257.44, Florida Statutes, fulfills an important state
14 interest. This section shall take effect October 1, 2004.

15 Section 18. Subsections (1) and (6) of section
16 265.284, Florida Statutes, are amended to read:

17 265.284 Chief cultural officer; director of division;
18 powers and duties.--

19 (1) The Secretary of State is the shall-be chief
20 cultural officer of the state and the Division of Cultural
21 Affairs is designated as the state arts administrative agency.

22 ~~{6}--Subject-to-funding-by-the-Legislature,-there-are~~
23 ~~created-the-State-Orchestra-Program,-State-Dance-Program,-and~~
24 ~~State-Opera-Program,-each-to-be-administered-as-part-of,-and~~
25 ~~under-the-direct-supervision-of,-the-Division-of-Cultural~~
26 ~~Affairs-~~

27 Section 19. Subsection (4) of section 265.2865,
28 Florida Statutes, is amended to read:

29 265.2865 Florida Artists Hall of Fame.--

30 (4) ~~In-the-first-year,-the-Secretary-of-State-shall~~
31 ~~name-no-more-than-12-members-to-the-Florida-Artists-Hall-of~~

1 ~~Fame--Thereafter~~, The Secretary of State shall name no more
2 than four members to the Florida Artists Hall of Fame in any 1
3 year.

4 Section 20. Subsection (4) of section 265.606, Florida
5 Statutes, is amended to read:

6 265.606 Cultural Endowment Program; administration;
7 qualifying criteria; matching fund program levels;
8 distribution.--

9 (4) Once the secretary has determined that the
10 sponsoring organization has complied with the criteria imposed
11 by this section, he or she may authorize the transfer of the
12 appropriate state matching funds to the organization. However,
13 the secretary shall ensure that the local group has made
14 prudent arrangements for the trusteeship of the entire
15 endowment, and such trusteeship is hereby created. The
16 sponsoring organization may then expend moneys in the
17 endowment program fund, subject to the following requirements:

18 (a) The organization may expend funds only for
19 operating costs incurred while engaged in programs directly
20 related to cultural activities.

21 (b) The organization shall annually submit a report to
22 the division, in such form as the division specifies,
23 explaining how endowment program funds were utilized.

24 (c) Any contract administered under this section shall
25 require the local sponsoring organization to submit to the
26 division an annual post audit of its financial accounts
27 conducted by an independent certified public accountant.

28 Section 21. Present subsection (4) of section 265.701,
29 Florida Statutes, is redesignated as subsection (5), and a new
30 subsection (4) is added to that section, to read:

1 265.701 Cultural facilities; grants for acquisition,
2 renovation, or construction; funding; approval; allocation.--

3 (4) Any contract administered under this section shall
4 require the recordation of a restrictive covenant by the
5 grantee and property owner or the purchase of a bond as
6 prescribed by rule to ensure that the facility continues to be
7 used as a cultural facility for a period of 10 years following
8 the grant award. If the facility ceases to be used as a
9 cultural facility during the 10 years following the grant
10 award, the grant funds shall be repaid to the department
11 according to an amortization schedule set forth in rule.

12 Section 22. Present subsection (8) of section 265.702,
13 Florida Statutes, is redesignated as subsection (9), and a new
14 subsection (8) is added to that section, to read:

15 265.702 Regional cultural facilities; grants for
16 acquisition, renovation, or construction; funding; approval;
17 allocation.--

18 (8) Any contract administered under this section shall
19 require the recordation of a restrictive covenant by the
20 grantee and property owner or the purchase of a bond as
21 prescribed by rule to ensure that the facility continues to be
22 used as a regional cultural facility for a period of 10 years
23 following the grant award. If the facility ceases to be used
24 as a cultural facility during the 10 years following the grant
25 award, the grant funds shall be repaid to the department
26 according to an amortization schedule set forth in rule.

27 Section 23. Section 265.703, Florida Statutes, is
28 created to read:

29 265.703 Citizen support organization; use of state
30 administrative services and property; audit.--
31

1 (1) CITIZEN SUPPORT ORGANIZATION.--The division may
2 support the establishment of a citizen support organization to
3 provide assistance, funding, and promotional support for the
4 cultural and arts programs of the division. For purposes of
5 this section, the term "citizen support organization" means an
6 organization that is:

7 (a) A Florida corporation not for profit incorporated
8 under the provisions of chapter 617 and approved by the
9 Department of State;

10 (b) Organized and operated to conduct programs and
11 activities; raise funds; request and receive grants, gifts,
12 and bequests of money; acquire, receive, hold, invest, and
13 administer, in its own name, securities, funds, objects of
14 value, or other property, real or personal; and make
15 expenditures to or for the direct or indirect benefit of the
16 division or individual program units of the division;

17 (c) Determined by the division to be consistent with
18 the goals of the division and in the best interests of the
19 state; and

20 (d) Approved in writing by the division to operate for
21 the direct or indirect benefit of the division; such approval
22 shall be given in a letter of agreement from the division.

23 (2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.--

24 (a) The division may fix and collect charges for the
25 rental of facilities and properties managed by the division
26 and may permit, without charge, appropriate use of
27 administrative services, property, and facilities of the
28 division by a citizen support organization, subject to the
29 provisions of this section. Such use must be directly in
30 keeping with the approved purposes of the citizen support
31 organization and may not be made at times or places that would

1 unreasonably interfere with opportunities for the general
2 public to use such facilities for established purposes. Any
3 moneys received from rentals of facilities and properties
4 managed by the division may be held in the operating trust
5 fund of the division or in a separate depository account in
6 the name of the citizen support organization and subject to
7 the provisions of the letter of agreement with the division.

8 (b) The division may prescribe by rule any condition
9 with which a citizen support organization shall comply in
10 order to use division administrative services, property, or
11 facilities.

12 (c) The division shall not permit the use of any
13 administrative services, property, or facilities of the state
14 by a citizen support organization which does not provide equal
15 membership and employment opportunities to all persons
16 regardless of race, color, religion, sex, age, or national
17 origin.

18 (3) ANNUAL AUDIT.--The citizen support organization
19 shall provide for an annual financial audit in accordance with
20 s. 215.981.

21 Section 24. Paragraph (a) of subsection (1) of section
22 267.0612, Florida Statutes, is amended to read:

23 267.0612 Florida Historical Commission; creation;
24 membership; powers and duties.--In order to enhance public
25 participation and involvement in the preservation and
26 protection of the state's historic and archaeological sites
27 and properties, there is created within the Department of
28 State the "Florida Historical Commission." The commission
29 shall serve in an advisory capacity to the director of the
30 Division of Historical Resources to assist the director in
31

1 carrying out the purposes, duties, and responsibilities of the
2 division, as specified in this chapter.

3 (1)(a) The commission shall be composed of 11 members.
4 Seven members shall be appointed by the Governor in
5 consultation with the Secretary of State, two members shall be
6 appointed by the President of the Senate, and two members
7 shall be appointed by the Speaker of the House of
8 Representatives. Of the seven members appointed by the
9 Governor, one member must be a licensed architect who has
10 expertise in historic preservation and architectural history;
11 one member must be a professional historian in the field of
12 American history; one member must be a professional
13 architectural historian; one member must be an archaeologist
14 specializing in the field of prehistory; and one member must
15 be an archaeologist specializing in the historic period. The
16 remaining two members appointed by the Governor and the two
17 members appointed by the President of the Senate and the
18 Speaker of the House of Representatives, respectively, must be
19 representatives of the general public with demonstrated
20 interest in the preservation of Florida's historical and
21 archaeological heritage. At least one member of the commission
22 shall be a resident of a county that has a population of
23 75,000 or fewer ~~less~~. A member whose term has expired shall
24 continue to serve on the commission until such time as a
25 replacement is appointed.

26 Section 25. Paragraphs (b) and (c) of subsection (1)
27 of section 267.0731, Florida Statutes, are amended to read:

28 267.0731 Great Floridians Program.--The division shall
29 establish and administer a program, to be entitled the Great
30 Floridians Program, which shall be designed to recognize and
31 record the achievements of Floridians, living and deceased,

1 who have made major contributions to the progress and welfare
2 of this state.

3 (1)

4 (b) In formulating its nominations, the division shall
5 also seek the assistance of the organization ~~Museum-of-Florida~~
6 ~~History-Foundation,-Inc,-,-or-its-succcessor~~, acting in the
7 capacity as a citizen support organization of the division,
8 pursuant to s. 267.17 and approved to act on behalf of the
9 Museum of Florida History.

10 (c) Annually, the division shall convene an ad hoc
11 committee composed of representatives of the Governor, each
12 member of the Florida Cabinet, the President of the Senate,
13 the Speaker of the House of Representatives, and the
14 organization described in paragraph (b) ~~Museum-of-Florida~~
15 ~~History-Foundation,-Inc.~~ This committee shall meet at least
16 twice. The committee shall nominate not fewer than two persons
17 whose names shall be submitted to the Secretary of State with
18 the recommendation that they be honored with the designation
19 "Great Floridian."

20 Section 26. Subsection (3) of section 267.16, Florida
21 Statutes, is repealed.

22 Section 27. Section 288.0251, Florida Statutes, is
23 amended to read:

24 288.0251 International development outreach activities
25 in Latin America and Caribbean Basin.--The Office of Tourism,
26 Trade, and Economic Development ~~Department-of-State~~ may
27 contract for the implementation of Florida's international
28 volunteer corps to provide short-term training and technical
29 assistance activities in Latin America and the Caribbean
30 Basin. The entity contracted under this section must require
31 that such activities be conducted by qualified volunteers who

1 are citizens of the state. The contracting agency must have a
2 statewide focus and experience in coordinating international
3 volunteer programs.

4 Section 28. Subsections (1), (2), and (3) of section
5 288.809, Florida Statutes, are amended to read:

6 288.809 Florida Intergovernmental Relations
7 Foundation; use of property; board of directors; audit.--

8 (1) DEFINITIONS.--For the purposes of this section,
9 the term:

10 (a) "Florida Intergovernmental Relations Foundation"
11 means a direct-support organization:

12 1. Which is a corporation not for profit that is
13 incorporated under the provisions of chapter 617 and approved
14 by the Department of State;

15 2. Which is organized and operated exclusively to
16 solicit receive, hold, invest, and administer property and,
17 subject to the approval of the Office of Tourism, Trade, and
18 Economic Development Department-of-State, to make expenditures
19 to or for the promotion of intergovernmental relations
20 programs; and

21 3. Which the Office of Tourism, Trade, and Economic
22 Development Department-of-State, after review, has certified
23 to be operating in a manner consistent with the policies and
24 goals of the office department.

25 (b) "Personal services" includes full-time or
26 part-time personnel, as well as payroll processing.

27 (2) USE OF PROPERTY.--The Office of Tourism, Trade,
28 and Economic Development department:

29 (a) Is authorized to permit the use of property,
30 facilities, and personal services of the Office of Tourism,
31

1 Trade, and Economic Development department by the foundation,
2 subject to the provisions of this section.

3 (b) Shall prescribe conditions with which the
4 foundation must comply in order to use property, facilities,
5 or personal services of the Office of Tourism, Trade, and
6 Economic Development department. Such conditions shall provide
7 for budget and audit review and for oversight by the Office of
8 Tourism, Trade, and Economic Development department.

9 (c) Shall not permit the use of property, facilities,
10 or personal services of the foundation if the foundation does
11 not provide equal employment opportunities to all persons,
12 regardless of race, color, national origin, sex, age, or
13 religion.

14 (3) BOARD OF DIRECTORS.--The board of directors of the
15 foundation shall be composed of seven members appointed by the
16 Governor Secretary-of-State, of whom no more than three shall
17 be employees or elected officials of the state.

18 Section 29. Section 288.816, Florida Statutes, is
19 amended to read:

20 288.816 Intergovernmental relations.--

21 (1) The Office of Tourism, Trade, and Economic
22 Development ~~Secretary-of-State~~ shall be responsible for
23 consular operations and the sister city and sister state
24 program and shall serve as liaison with foreign, federal, and
25 other state international organizations and with county and
26 municipal governments in Florida.

27 (2) The Office of Tourism, Trade, and Economic
28 Development secretary shall be responsible for all consular
29 relations between the state and all foreign governments doing
30 business in Florida. The office secretary shall monitor
31 United States laws and directives to ensure that all federal

1 treaties regarding foreign privileges and immunities are
2 properly observed. The office secretary shall promulgate rules
3 which shall:

4 (a) Establish a viable system of registration for
5 foreign government officials residing or having jurisdiction
6 in the state. Emphasis shall be placed on maintaining active
7 communication between the secretary and the United States
8 Department of State in order to be currently informed
9 regarding foreign governmental personnel stationed in, or with
10 official responsibilities for, Florida. Active dialogue shall
11 also be maintained with foreign countries which historically
12 have had dealings with Florida in order to keep them informed
13 of the proper procedure for registering with the state.

14 (b) Maintain and systematically update a current and
15 accurate list of all such foreign governmental officials,
16 consuls, or consulates.

17 (c) Issue certificates to such foreign governmental
18 officials after verification pursuant to proper investigations
19 through United States Department of State sources and the
20 appropriate foreign government.

21 (d) Verify entitlement to sales and use tax exemptions
22 pursuant to United States Department of State guidelines and
23 identification methods.

24 (e) Verify entitlement to issuance of special motor
25 vehicle license plates by the Division of Motor Vehicles of
26 the Department of Highway Safety and Motor Vehicles to
27 honorary consuls or such other officials representing foreign
28 governments who are not entitled to issuance of special Consul
29 Corps license plates by the United States Government.

30 (f) Establish a system of communication to provide all
31 state and local law enforcement agencies with information

1 regarding proper procedures relating to the arrest or
2 incarceration of a foreign citizen.

3 (g) Request the Department of Law Enforcement to
4 provide transportation and protection services when necessary
5 pursuant to s. 943.68.

6 (h) Coordinate, when necessary, special activities
7 between foreign governments and Florida state and local
8 governments. These may include Consular Corps Day, Consular
9 Corps conferences, and various other social, cultural, or
10 educational activities.

11 (i) Notify all newly arrived foreign governmental
12 officials of the services offered by the Office of Tourism,
13 Trade, and Economic Development ~~secretary~~.

14 (3) The Office of Tourism, Trade, and Economic
15 Development ~~Secretary-of-State~~ shall operate the sister city
16 and sister state program and establish such new programs as
17 needed to further global understanding through the interchange
18 of people, ideas, and culture between Florida and the world.
19 To accomplish this purpose, the office ~~secretary~~ shall have
20 the power and authority to:

21 (a) Coordinate and carry out activities designed to
22 encourage the state and its subdivisions to participate in
23 sister city and sister state affiliations with foreign
24 countries and their subdivisions. Such activities may include
25 a State of Florida sister cities conference.

26 (b) Encourage cooperation with and disseminate
27 information pertaining to the Sister Cities International
28 Program and any other program whose object is to promote
29 linkages with foreign countries and their subdivisions.
30
31

1 (c) Maximize any aid available from all levels of
2 government, public and private agencies, and other entities to
3 facilitate such activities.

4 (d) Establish a viable system of registration for
5 sister city and sister state affiliations between the state
6 and foreign countries and their subdivisions. Such system
7 shall include a method to determine that sufficient ties are
8 properly established as well as a method to supervise how
9 these ties are maintained.

10 (e) Maintain a current and accurate listing of all
11 such affiliations. Sister city affiliations shall not be
12 discouraged between the state and any country specified in s.
13 620(f)(1) of the federal Foreign Assistance Act of 1961, as
14 amended, with whom the United States is currently conducting
15 diplomatic relations unless a mandate from the United States
16 Government expressly prohibits such affiliations.

17 (4) The Office of Tourism, Trade, and Economic
18 Development ~~Secretary-of-State~~ shall serve as a contact for
19 the state with the Florida Washington Office, the Florida
20 Congressional Delegation, and United States Government
21 agencies with respect to laws or policies which may affect the
22 interests of the state in the area of international
23 relations. All inquiries received regarding international
24 economic trade development or reverse investment opportunities
25 shall be referred to Enterprise Florida, Inc. In addition,
26 the office secretary shall serve as liaison with other states
27 with respect to international programs of interest to
28 Florida. The office secretary shall also investigate and make
29 suggestions regarding possible areas of joint action or
30 regional cooperation with these states.
31

1 (5) The Office of Tourism, Trade, and Economic
2 Development Secretary-of-State shall have the power and duty
3 to encourage the relocation to Florida of consular offices and
4 multilateral and international agencies and organizations.

5 (6) The Office of Tourism, Trade, and Economic
6 Development Secretary-of-State, through membership on the
7 board of directors of Enterprise Florida, Inc., shall help to
8 contribute an international perspective to the state's
9 development efforts.

10 Section 30. Subsection (1) of section 288.8175,
11 Florida Statutes, is amended to read:

12 288.8175 Linkage institutes between postsecondary
13 institutions in this state and foreign countries.--

14 (1) As used in this section, the term "department"
15 means the Department of Education State.

16 Section 31. Subsection (9) of section 440.02, Florida
17 Statutes, and paragraph (b) of subsection (15), as amended by
18 section 2 of chapter 2003-412, Laws of Florida, are amended to
19 read:

20 440.02 Definitions.--When used in this chapter, unless
21 the context clearly requires otherwise, the following terms
22 shall have the following meanings:

23 (9) "Corporate officer" or "officer of a corporation"
24 means any person who fills an office provided for in the
25 corporate charter or articles of incorporation filed with the
26 Division of State Recordings ~~Corporations~~ of the Department of
27 State or as permitted or required by chapter 607. As to
28 persons engaged in the construction industry, the term
29 "officer of a corporation" includes a member owning at least
30 10 percent of a limited liability company created and approved
31 under chapter 608.

1 (15)

2 (b) "Employee" includes any person who is an officer
3 of a corporation and who performs services for remuneration
4 for such corporation within this state, whether or not such
5 services are continuous.

6 1. Any officer of a corporation may elect to be exempt
7 from this chapter by filing written notice of the election
8 with the department as provided in s. 440.05.

9 2. As to officers of a corporation who are engaged in
10 the construction industry, no more than three officers of a
11 corporation or of any group of affiliated corporations may
12 elect to be exempt from this chapter by filing written notice
13 of the election with the department as provided in s. 440.05.
14 Officers must be shareholders, each owning at least 10 percent
15 of the stock of such corporation and listed as an officer of
16 such corporation with the Division of State Recordings
17 ~~Corporations~~ of the Department of State, in order to elect
18 exemptions under this chapter. For purposes of this
19 subparagraph, the term "affiliated" means and includes one or
20 more corporations or entities, any one of which is a
21 corporation engaged in the construction industry, under the
22 same or substantially the same control of a group of business
23 entities which are connected or associated so that one entity
24 controls or has the power to control each of the other
25 business entities. The term "affiliated" includes, but is not
26 limited to, the officers, directors, executives, shareholders
27 active in management, employees, and agents of the affiliated
28 corporation. The ownership by one business entity of a
29 controlling interest in another business entity or a pooling
30 of equipment or income among business entities shall be prima
31 facie evidence that one business is affiliated with the other.

1 3. An officer of a corporation who elects to be exempt
2 from this chapter by filing a written notice of the election
3 with the department as provided in s. 440.05 is not an
4 employee.

5
6 Services are presumed to have been rendered to the corporation
7 if the officer is compensated by other than dividends upon
8 shares of stock of the corporation which the officer owns.

9 Section 32. Subsections (3) and (11) of section
10 440.05, Florida Statutes, are amended to read:

11 440.05 Election of exemption; revocation of election;
12 notice; certification.--

13 (3) Each officer of a corporation who is engaged in
14 the construction industry and who elects an exemption from
15 this chapter or who, after electing such exemption, revokes
16 that exemption, must mail a written notice to such effect to
17 the department on a form prescribed by the department. The
18 notice of election to be exempt from the provisions of this
19 chapter must be notarized and under oath. The notice of
20 election to be exempt which is submitted to the department by
21 the officer of a corporation who is allowed to claim an
22 exemption as provided by this chapter must list the name,
23 federal tax identification number, social security number, all
24 certified or registered licenses issued pursuant to chapter
25 489 held by the person seeking the exemption, a copy of
26 relevant documentation as to employment status filed with the
27 Internal Revenue Service as specified by the department, a
28 copy of the relevant occupational license in the primary
29 jurisdiction of the business, and the registration number of
30 the corporation filed with the Division of State Recordings
31 Corporations of the Department of State along with a copy of

1 the stock certificate evidencing the required ownership under
2 this chapter. The notice of election to be exempt must
3 identify each corporation that employs the person electing the
4 exemption and must list the social security number or federal
5 tax identification number of each such employer and the
6 additional documentation required by this section. In
7 addition, the notice of election to be exempt must provide
8 that the officer electing an exemption is not entitled to
9 benefits under this chapter, must provide that the election
10 does not exceed exemption limits for officers provided in s.
11 440.02, and must certify that any employees of the corporation
12 whose officer elects an exemption are covered by workers'
13 compensation insurance. Upon receipt of the notice of the
14 election to be exempt, receipt of all application fees, and a
15 determination by the department that the notice meets the
16 requirements of this subsection, the department shall issue a
17 certification of the election to the officer, unless the
18 department determines that the information contained in the
19 notice is invalid. The department shall revoke a certificate
20 of election to be exempt from coverage upon a determination by
21 the department that the person does not meet the requirements
22 for exemption or that the information contained in the notice
23 of election to be exempt is invalid. The certificate of
24 election must list the name of the corporation listed in the
25 request for exemption. A new certificate of election must be
26 obtained each time the person is employed by a new or
27 different corporation that is not listed on the certificate of
28 election. A copy of the certificate of election must be sent
29 to each workers' compensation carrier identified in the
30 request for exemption. Upon filing a notice of revocation of
31 election, an officer who is a subcontractor or an officer of a

1 corporate subcontractor must notify her or his contractor.
2 Upon revocation of a certificate of election of exemption by
3 the department, the department shall notify the workers'
4 compensation carriers identified in the request for exemption.

5 (11) Any corporate officer permitted by this chapter
6 to claim an exemption must be listed on the records of this
7 state's Secretary of State, Division of State Recordings
8 ~~Corporations~~, as a corporate officer. The department shall
9 issue a stop-work order under s. 440.107(1) to any corporation
10 who employs a person who claims to be exempt as a corporate
11 officer but who fails or refuses to produce the documents
12 required under this subsection to the department within 3
13 business days after the request is made.

14 Section 33. Subsection (4) of section 607.0401,
15 Florida Statutes, is amended to read:

16 607.0401 Corporate name.--A corporate name:

17 (4) Must be distinguishable from the names of all
18 other entities or filings, except fictitious name
19 registrations pursuant to s. 865.09, organized, registered, or
20 reserved under the laws of this state, which names are on file
21 with the Division of State Recordings ~~Corporations~~.

22 Section 34. Paragraph (b) of subsection (1) and
23 subsection (2) of section 607.1506, Florida Statutes, are
24 amended to read:

25 607.1506 Corporate name of foreign corporation.--

26 (1) A foreign corporation is not entitled to file an
27 application for a certificate of authority unless the
28 corporate name of such corporation satisfies the requirements
29 of s. 607.0401. If the corporate name of a foreign corporation
30 does not satisfy the requirements of s. 607.0401, the foreign
31

1 corporation, to obtain or maintain a certificate of authority
2 to transact business in this state:

3 (b) May use an alternate name to transact business in
4 this state if its real name is unavailable. Any such alternate
5 corporate name, adopted for use in this state, shall be
6 cross-referenced to the real corporate name in the records of
7 the Division of State Recordings Corporations. If the
8 corporation's real corporate name becomes available in this
9 state or the corporation chooses to change its alternate name,
10 a copy of the resolution of its board of directors changing or
11 withdrawing the alternate name, executed as required by s.
12 607.0120, shall be delivered for filing.

13 (2) The corporate name (including the alternate name)
14 of a foreign corporation must be distinguishable upon the
15 records of the Division of State Recordings Corporations from:

16 (a) Any corporate name of a corporation incorporated
17 or authorized to transact business in this state;

18 (b) The alternate name of another foreign corporation
19 authorized to transact business in this state;

20 (c) The corporate name of a not-for-profit corporation
21 incorporated or authorized to transact business in this state;
22 and

23 (d) The names of all other entities or filings, except
24 fictitious name registrations pursuant to s. 865.09, organized
25 or registered under the laws of this state that are on file
26 with the Division of State Recordings Corporations.

27 Section 35. Paragraph (e) of subsection (1) of section
28 617.0401, Florida Statutes, is amended to read:

29 617.0401 Corporate name.--

30 (1) A corporate name:
31

1 (e) Must be distinguishable from the names of all
2 other entities or filings, except fictitious name
3 registrations pursuant to s. 865.09, organized, registered, or
4 reserved under the laws of this state, that are on file with
5 the Division of State Recordings Corporations.

6 Section 36. Subsections (2) and (4) of section
7 617.1506, Florida Statutes, are amended to read:

8 617.1506 Corporate name of foreign corporation.--

9 (2) The corporate name, including the alternate name,
10 of a foreign corporation must be distinguishable, within the
11 records of the Division of State Recordings Corporations,
12 from:

13 (a) The alternate name of another foreign corporation
14 authorized to transact business in this state.

15 (b) The corporate name of a not-for-profit corporation
16 incorporated or authorized to transact business in this state.

17 (c) The names of all other entities or filings, except
18 fictitious name registrations pursuant to s. 865.09,
19 organized, or registered under the laws of this state, that
20 are on file with the Division of State Recording Corporations.

21 (4) The corporate name must be distinguishable from
22 the names of all other entities or filings, organized,
23 registered, or reserved under the laws of the state that are
24 on file with the Division of State Recordings Corporations,
25 except fictitious name registrations pursuant to s. 865.09.

26 Section 37. Subsection (3) of section 620.103, Florida
27 Statutes, is amended to read:

28 620.103 Name of limited partnership.--The name of each
29 domestic limited partnership as set forth in its certificate
30 of limited partnership and the name of each foreign limited
31

1 partnership as set forth in its application for registration
2 as a foreign limited partnership:

3 (3) Must be distinguishable from the names of all
4 other entities or filings, except fictitious name
5 registrations pursuant to s. 865.09, organized, registered, or
6 reserved under the laws of this state, the names of which are
7 on file with the Division of State Recordings Corporations of
8 the Department of State.

9 Section 38. Paragraph (c) of subsection (2) of section
10 865.09, Florida Statutes, is amended to read:

11 865.09 Fictitious name registration.--

12 (2) DEFINITIONS.--As used in this section:

13 (c) "Division" means the Division of State Recordings
14 Corporations of the Department of State.

15 Section 39. The following programs, functions, and
16 activities are hereby transferred by a type two transfer, as
17 defined in section 20.06(2), Florida Statutes, from the
18 Department of State to the Office of Tourism, Trade, and
19 Economic Development within the Executive Office of the
20 Governor:

21 (1) The provision of assistance and facilities to the
22 Organization of American States, as authorized and governed by
23 section 15.17, Florida Statutes, as that section exists on
24 June 30, 2004.

25 (2) State protocol officer functions, as authorized
26 and governed by section 15.19, Florida Statutes, as that
27 section exists on June 30, 2004.

28 (3) International development outreach activities in
29 Latin America and the Caribbean Basin, as authorized and
30 governed by section 288.0251, Florida Statutes.
31

1 (4) The Florida Intergovernmental Relations
2 Foundation, as authorized an governed by section 288.809,
3 Florida Statutes.

4 (5) Intergovernmental relations functions, as
5 authorized and governed by section 288.816, Florida Statutes.
6 Notwithstanding section 20.06(2), Florida Statutes, trust
7 funds associated with these programs, functions, and
8 activities shall remain within the Department of State.

9 Section 40. Linkage institutes between postsecondary
10 institutions in this state and foreign countries, as
11 authorized and governed by section 288.817, Florida Statutes,
12 are transferred by a type two transfer, as defined in section
13 20.06(2), Florida Statutes, from the Department of State to
14 the Department of Education. Notwithstanding section 20.06(2),
15 Florida Statutes, trust funds associated with these institutes
16 shall remain within the Department of State.

17 Section 41. Sections 15.0913, 15.17, 15.19, 265.51,
18 265.52, 265.53, 265.54, 265.55, and 265.56, Florida Statutes,
19 are repealed.

20 Section 42. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 invalidity does not affect other provisions or applications of
23 the act which can be given effect without the invalid
24 provision or application, and to this end the provisions of
25 this act are severable.

26 Section 43. Except as otherwise expressly provided in
27 this act, this act shall take effect July 1, 2004.
28
29
30
31

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

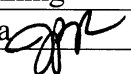

BILL: CS/CS/SB 1174

SPONSOR: Natural Resources Committee, Comprehensive Planning Committee and Senator Bennett

SUBJECT: Smart Growth Study Commission

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/CS
2.	Branning	Kiger	NR	Fav/CS
3.	Rhea 	Wilson 	GO	
4.			RC	
5.				
6.				

I. Summary:

The bill creates the 2005 Smart Growth Study Commission (commission). This bill requires the Governor, the Speaker of the House of Representatives, and the President of the Senate to each appoint 5 voting members representing specific interests and provides for the appointment of ex-officio members. The commission is required to review the implementation of the state's growth management programs and make recommendations relating to certain issues identified in the bill.

In addition, the bill requires the commission to hold at least eight public hearings throughout the state, which are scheduled every 60 days, to solicit input regarding better coordination of state and local growth management programs. It allows for the appointment of an executive director and technical advisory committees. The bill authorizes per diem and travel expenses for commission members and those members of a technical advisory committee. The Department of Community Affairs (DCA) must provide staff assistance to the executive director and the commission.

This bill requires the commission to provide a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 1, 2006. This report must address certain issues and the DCA is required to prepare legislative recommendations that are consistent with the report for consideration by the 2006 Legislature. Finally, the bill appropriates \$300,000 from the General Revenue Fund to DCA for the implementation of the bill.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

A. Executive Branch Organization.

Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03 (10), F.S., defines a “commission,” unless otherwise required by the State Constitution, to mean:

... a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.03(7), F.S., defines the term “council” or “advisory council” to mean:

... an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.052, F.S., provides that advisory bodies, commission, boards of trustees and other collegial bodies created by statutory enactment must be established, evaluated, or maintained in accordance with specific standards:

- ▶ It may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.
- ▶ It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose.
- ▶ The Legislature and the public must be kept informed of the numbers, purposes, membership, activities, and expenses of these entities.
- ▶ A collegial body may not be created or reestablished unless:
 - It meets a statutorily defined purpose.
 - Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.
 - Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and
 - Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

Additionally, s. 20.052, F.S., requires the private citizen members of an advisory body that is adjunct to an executive agency to be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.

All meetings and records of such an entity are public under the requirements of s. 286.011, F.S., and ch. 119, F.S.

Under the section, upon termination, all records of the collegial body are to be appropriately stored by the executive agency to which it was adjunct, and any property assigned to it must be reclaimed by that agency. The collegial body is not authorized to perform any activities after the effective date of its abolition.

B. State, Regional, and Local Planning.

Beginning in 1972, Florida enacted a series of statutes that implemented a coordinated system of state, regional, and local planning. Chapter 163, F.S., provides a comprehensive growth management process that incorporates some principles of smart growth. The 1985 Growth Management Act added the concurrency requirement to ensure that facilities and services necessary to support development be made available concurrently with the impacts of development. However, many of Florida's communities continue to grapple with the issue of urban sprawl. Development, in many cases, has been directed to areas with adequate road capacity although the costs of development in those areas may be higher.

Florida's growth management system includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; ss. 163.3161-163.3244, F.S.; chapter 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs; chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and chapter 187, F.S., the State Comprehensive Plan.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code (F.A.C.).

Chapter 380, F.S., includes the Development of Regional Impact (DRI) program, enacted as part of the Florida Environmental Land and Water Management Act of 1972. The DRI Program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Rule 28-24, F.A.C.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a substantial likelihood of additional regional impact, or any type of regional impact constitutes a "substantial deviation" which requires further DRI review and requires a new or amended local development order. The statute sets out criteria for determining when certain changes are to be considered substantial deviations without need for a hearing, and provides that all such changes are considered cumulatively.

Chapter 186, F.S., provides for the creation of 11 regional planning councils (RPCs) and for the adoption of strategic regional policy plans by the RPCs. These strategic regional policy plans must be consistent with the state comprehensive plan.

The state comprehensive plan, chapter 187, F.S., was enacted in 1985, to provide long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include: for example, land use; urban and downtown revitalization; public facilities; transportation; water resources; and natural systems and recreational lands. By October 1st of each odd-numbered year, the Governor's Office is required to prepare any proposed revisions to the state comprehensive plan deemed necessary and present proposed revisions to the Administration Commission. The Administration Commission is then required to review such recommendations and forward to the Legislature any proposed amendments approved by the Commission.

Smart Growth

During the 2003 Regular Session, the Committee on Comprehensive Planning heard presentations on smart growth development strategies. The concept of smart growth involves redirecting growth in areas with adequate infrastructure which, in turn, leads to more efficient transportation, revitalization of neighborhoods, and preservation of surrounding green space. In contrast, sprawling development may result in higher taxes, traffic congestion, and investment dollars being diverted from older neighborhoods. The presentations to the committee focused on strategies for redirecting growth through infill and redevelopment and the use of urban growth boundaries as a method for targeting growth in areas with available infrastructure.

Urban Infill and Redevelopment

Strategies for promoting and encouraging urban infill and redevelopment may include regulatory changes to reduce barriers to these projects, reducing developer's costs, and improving the market for high density development.¹ The Legislative Committee on Intergovernmental Relations produced an interim project report in 1997 on developing a state urban policy. The committee reached consensus on the following strategies that should be part of the framework for the state's urban policy:

- Supporting and promoting fiscally strong, sustainable, and livable urban centers;
- Recognizing infill development and redevelopment is necessary to promote and support fiscally strong, sustainable, and livable centers;
- Supporting compact, multi-functional urban centers through the adoption and support of policies that reduce urban sprawl;

¹ See <http://www.lcd.state.or.us/tgm/pub/1infill.htm>, Transportation and Growth Management Program (Oregon).

- Encouraging communities to include a redesign step, involving citizens in the redesign initiative prior to redevelopment;
- Adopting macro-level urban policies and providing local governments with the flexibility to determine and address their urban priorities;
- Enhancing the linkages between land and water use planning and transportation planning for current and future designated urban areas;
- Amending existing concurrency requirements for urban areas in order to promote redevelopment efforts where such changes do not jeopardize public health and safety;
- Requiring that all proposed developments receive a full-cost accounting review in order to provide a more accurate estimate of the true development costs incurred by the local government;
- Requiring general-purpose local governments, school boards, and local community colleges to coordinate on educational issues, including planning functions and the development of joint facilities;
- Promoting mass transit systems for urban centers, including multi-modal transportation feeder systems;
- Integrating state programs that have been developed to promote economic development and neighborhood revitalization through incentives in order to promote the development of designated urban infill areas; and
- Encouraging the location of appropriate public facilities within urban centers.²

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.³ The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The bill provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated \$2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program.

In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. The Florida Local Government Development Agreement Act was revised to provide certain assurances to the developer of a brownfields site. Also, it amended annexation laws to allow for the annexation of an unincorporated area through a single referendum of the residents in the area proposed for annexation. The bill authorized the use of eminent domain for an unincorporated enclave surrounded by a community development district. It also established procedures for a county or combination of counties and municipalities to develop and adopt plans to improve efficiency, coordination, and delivery of local services. Finally, the legislation created the State Housing Tax Credit Program authorizing tax credits to be issued against the state corporate income tax and established the Urban Homesteading Program within the Governor's Office to make single-family housing properties available to eligible low-income buyers.

² Report on the Development of a State Urban Policy, Legislative Committee on Intergovernmental Relations, February 1998 at 99-102.

³ Ch. 99-378, s. 1, Laws of Fla.

The Legislature has provided incentives for a local government that has adopted an urban infill and redevelopment plan.⁴ These incentives include the issuance of revenue bonds under s. 163.385, F.S., and the option of employing tax increment financing under s. 163.387, F.S., to finance the implementation of the plan. Further, a local government that has adopted an urban infill and redevelopment plan may exercise the powers of a community redevelopment neighborhood improvement district under s. 163.514, F.S., which includes the authority to levy a special assessment. An area designated as an urban infill and redevelopment area is given a priority in the allocation of private activity bonds from the state pool under s. 159.807, F.S. Notwithstanding the incentives for urban infill and redevelopment, there are persistent barriers to urban infill and redevelopment projects.

III. Effect of Proposed Changes:

Section 1 creates the 2005 Smart Growth Study Commission. The commission consists of 15 voting members with the Governor, President of the Senate, and the Speaker of the House of Representatives each appointing 5 members. The chair of the commission is to be selected by the Governor from his or her appointees and will vote only if there is a tie vote. The commission shall also have the following ex officio members: the secretaries of the Department of Transportation, DCA, and the Department of Environmental Protection, the executive director of the Fish and Wildlife Conservation Commission, and the Commissioner of Agriculture or their designees; 2 members of the House of Representatives appointed by the Speaker; and 2 Senators appointed by the President of the Senate.

The members of the commission are to be appointed by July 1, 2004, and the first meeting held by September 1, 2004. A vacancy on the commission will be filled in the same manner as the original appointment. The Governor, Speaker of the House of Representatives, and the President of the Senate must each appoint members that represent each of the following:

- Business interests, including development and real estate;
- Agricultural interests, including farming, aquaculture, ranching, and forestry;
- Local and regional governments;
- Environmental interests, including nonprofit organizations that promote conservation or protection of natural resources; and
- Citizens organizations, including community associations, citizen groups, and affordable housing groups.

The bill specifies voting procedures. Each member is entitled to one vote. Actions taken by the commission require a two-thirds approval. A majority of the members constitutes a quorum and is required for the commission to take action. The commission is tasked with reviewing the operation and implementation of the state's growth management programs and laws, including, but not limited to, chapters 163, 186, 187, and 380, F.S. Following this review, the bill requires the commission to make specific recommendations relating to:

⁴ Section 163.2520, F.S.

- Determining methods to substantially improve, modify, or replace the current system of controls and incentives for managing growth with alternatives that have a higher likelihood of significantly improving the growth-management system;
- Implementing programs that provide necessary incentives, including financial incentives, to promote and encourage urban infill and redevelopment;
- Determining the most appropriate agency, or combination of agencies, or the creation of a new agency to effectively implement a partnership and appropriate oversight role with local and regional governments for growth management;
- Enhancing the public participation at all levels of decisionmaking involving growth management;
- Providing development interests with necessary certainty regarding where, when, and how development will be encouraged and promoted;
- Providing coordination, incentives, and funding programs that jointly share, among state, regional, and local government entities the responsibility for relieving overcrowded conditions in schools, easing traffic congestion, protecting the state's natural resources;
- Revising the development-of-regional-impact process to streamline and reduce duplication in the application for development approval and to make any necessary changes to the criteria used in determining whether a proposed change constitutes a substantial deviation requiring further review; and
- Maintaining existing private property rights in a growing economy so all sectors of the state's economy share in an improved quality of life.

The commission is required to hold at least eight public hearings that are conducted every 60 days at different locations throughout the state. At these hearings, the commission will solicit input from the public and interest groups on the effectiveness of Florida's growth-management system, with particular attention to suggestions for better coordination of local, state, and regional growth management programs.

By January 1, 2006, the commission shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report with specific recommendations concerning the issues identified above. The DCA shall prepare legislative recommendations consistent with the commission's report for consideration by the 2006 Legislature.

The commission may appoint technical advisory committees. Commission members and the members of any technical advisory committee that is appointed, may not receive remuneration for their services, but members other than public officers and employees are entitled to be reimbursed by the DCA for travel or per diem expenses pursuant to s. 112.062, F.S. Public officers and employees are entitled to be reimbursed by their respective agencies in accordance with s. 112.061, F.S.

The commission may appoint an executive director, who shall report to the commission and serve at its pleasure. The DCA shall provide the commission and the executive director with staff assistance. The department may, upon the request of the commission, reimburse consultants if such costs can be funded from the appropriation provided for in this act.

All agencies under the control of the Governor are directed, and all other agencies are requested, to render assistance and cooperation to the commission.

The commission shall continue in existence until its public hearings and written report are complete, but not later than January 1, 2006.

Section 2 of the bill appropriates \$300,000 from the General Revenue Fund to DCA to implement the provisions of the bill.

Section 3 provides that the bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers.⁵ The bill creates a “commission,” which is required by s. 20.03(10), F.S., to be created within a department, the office of the Governor, or the Executive Office of the Governor. As such, the Governor is authorized to appoint all executive branch officers, though the Legislature is authorized to provide for Senate confirmation under Article IV, s. 6 of the State Constitution.⁶ The bill provides for legislative officers, as well as the Governor, to appoint members and does not provide for Senate confirmation.

While this entity is designated a “commission,” however, its powers do not appear to meet the definition of a commission as it does not exercise limited quasi-legislative or quasi-judicial powers, or both, independently. Instead, the entity appears to be a council, as provided in s. 20.03, F.S. (see, *infra*). While the definition of a “council” does not specifically require it to be created within or adjunct to an executive branch entity, a council is still within the executive branch and the same appointment requirements would appear to apply.

⁵ *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

⁶ While the ultimate choice of an appointee to an executive branch office resides with the Governor, the Legislature has established processes which limit the choices that are available to the Governor for appointment to a statutory office. For example, the Governor is required to select the head of the Department of Transportation from a list of three nominees forwarded to him by the Florida Transportation Commission.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires DCA to provide staff assistance to the commission and its executive director. Commission members, as well as, members of technical advisory committees appointed by the commission, are entitled to per diem and travel expenses. In addition, the bill appropriates \$300,000 from the General Revenue Fund for implementation of the provisions of the bill.

VI. Technical Deficiencies:

Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03 (10), F.S., defines a “commission,” unless otherwise required by the State Constitution, to mean:

... a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and *exercising limited quasi-legislative or quasi-judicial powers, or both, independently* of the head of the department or the Governor *[emphasis added]*.

Section 20.03(7), F.S., defines the term “council” or “advisory council” to mean:

... an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and *to provide recommendations* and policy alternatives *[emphasis added]*.

The entity that is created by the bill is called a “commission” but it does not appear to meet the statutory definition of a “commission” that is provided in s. 20.03(10), F.S. Instead, it appears to meet the definition of a “council” that is provided in s. 20.03(7), F.S., as its powers are stated on page 4, line 4 to page 5, line 3 to make “. . . specific recommendations relating to . . .” particular issues and then to file a report with the Governor, the President of the Senate, and the Speaker of the House.

Further, under the definitions of a “council” and a “commission” provided under s. 20.03, F.S., a commission is a body created within a department, the office of the Governor, or the Executive Office of the Governor. The commission created by this bill is not created adjunct to any entity. The definition of “council” does not include a requirement that the entity be created within a department, the office of the Governor, or the Executive Office of the Governor.

Section 20.052(5)(a), F.S., requires the private citizen members of a commission or board of trustees that is adjunct to an executive agency to be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for SB 1174Amendment No. 

843080

CHAMBER ACTION

SenateHouse

**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

DATE: 4-16-04

TIME: 3:40 P.m.

Senator Miller moved the following amendment:

Senate Amendment

On page 3, lines 19-21, delete those lines

and insert:

(c) Municipal and county governments;

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

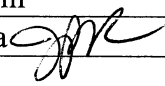

BILL: SB 2554

SPONSOR: Senator Geller

SUBJECT: 2005 Smart Growth Management Commission

DATE: April 5, 2004

REVISED: 04/14/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Favorable
2.	Rhea 	Wilson 	GO	
3.			ATD	
4.			AP	
5.			RC	
6.				

I. Summary:

The bill creates the 2005 Smart Growth Study Commission (the "commission"). This bill requires the Governor, the Speaker of the House of Representatives, and the President of the Senate to each appoint 5 voting members representing specific interests and provides for the appointment of ex officio members. The commission is required to review the implementation of the state's growth management programs and make recommendations relating to certain issues identified in the bill.

In addition, the bill requires the commission to hold at least eight public hearings throughout the state, which are scheduled every 60 days, to solicit input regarding better coordination of state and local growth management programs. It allows for the appointment of an executive director and technical advisory committees. The bill authorizes per diem and travel expenses for commission members and those members of a technical advisory committee. The Department of Community Affairs (DCA) must provide staff assistance to the executive director and the commission.

This bill requires the commission to provide a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by December 1, 2005. This report must address certain issues and the DCA is required to prepare legislative recommendations that are consistent with the report for consideration by the 2006 Legislature. Finally, the bill appropriates \$300,000 from the General Revenue Fund to DCA for the implementation of the bill.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

A. Executive Branch Organization.

Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03 (10), F.S., defines a “commission,” unless otherwise required by the State Constitution, to mean:

... a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.03(7), F.S., defines the term “council” or “advisory council” to mean:

... an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.052, F.S., provides that advisory bodies, commission, boards of trustees and other collegial bodies created by statutory enactment must be established, evaluated, or maintained in accordance with specific standards:

- ▶ It may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.
- ▶ It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose.
- ▶ The Legislature and the public must be kept informed of the numbers, purposes, membership, activities, and expenses of these entities.
- ▶ A collegial body may not be created or reestablished unless:
 - It meets a statutorily defined purpose.
 - Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.
 - Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and
 - Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

Additionally, s. 20.052, F.S., requires the private citizen members of an advisory body that is adjunct to an executive agency to be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.

All meetings and records of such an entity are public under the requirements of s. 286.011, F.S., and ch. 119, F.S.

Under the section, upon termination, all records of the collegial body are to be appropriately stored by the executive agency to which it was adjunct, and any property assigned to it must be reclaimed by that agency. The collegial body is not authorized to perform any activities after the effective date of its abolition.

B. State, Regional, and Local Planning.

Beginning in 1972, Florida enacted a series of statutes that implemented a coordinated system of state, regional, and local planning. Chapter 163, F.S., provides a comprehensive growth management process that incorporates some principles of smart growth. The 1985 Growth Management Act added the concurrency requirement to ensure that facilities and services necessary to support development be made available concurrently with the impacts of development. However, many of Florida's communities continue to grapple with the issue of urban sprawl. Development, in many cases, has been directed to areas with adequate road capacity although the costs of development in those areas may be higher.

Florida's growth management system includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; ss. 163.3161-163.3244, F.S.; ch. 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs; ch. 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and ch. 187, F.S., the State Comprehensive Plan.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code (F.A.C.).

Chapter 380, F.S., includes the Development of Regional Impact (DRI) program, enacted as part of the Florida Environmental Land and Water Management Act of 1972. The DRI Program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Rule 28-24, F.A.C.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a substantial likelihood of additional regional impact, or any type of regional impact constitutes a "substantial deviation" which requires further DRI review and requires a new or amended local development order. The statute sets out criteria for determining when certain changes are to be considered substantial deviations without need for a hearing, and provides that all such changes are considered cumulatively.

Chapter 186, F.S., provides for the creation of 11 regional planning councils (RPCs) and for the adoption of strategic regional policy plans by the RPCs. These strategic regional policy plans must be consistent with the state comprehensive plan.

The state comprehensive plan, ch. 187, F.S., was enacted in 1985, to provide long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include: for example, land use; urban and downtown revitalization; public facilities; transportation; water resources; and natural systems and recreational lands. By October 1st of each odd-numbered year, the Governor's Office is required to prepare any proposed revisions to the state comprehensive plan deemed necessary and present proposed revisions to the Administration Commission. The Administration Commission is then required to review such recommendations and forward to the Legislature any proposed amendments approved by the Commission.

Smart Growth

During the 2003 Regular Session, the Senate Committee on Comprehensive Planning heard presentations on smart growth development strategies. The concept of smart growth involves redirecting growth in areas with adequate infrastructure which, in turn, leads to more efficient transportation, revitalization of neighborhoods, and preservation of surrounding green space. In contrast, sprawling development may result in higher taxes, traffic congestion, and investment dollars being diverted from older neighborhoods. The presentations to the committee focused on strategies for redirecting growth through infill and redevelopment and the use of urban growth boundaries as a method for targeting growth in areas with available infrastructure.

Urban Infill and Redevelopment

Strategies for promoting and encouraging urban infill and redevelopment may include regulatory changes to reduce barriers to these projects, reducing developer's costs, and improving the market for high density development.¹ The Legislative Committee on Intergovernmental Relations produced an interim project report in 1997 on developing a state urban policy. The committee reached consensus on the following strategies that should be part of the framework for the state's urban policy:

- Supporting and promoting fiscally strong, sustainable, and livable urban centers;
- Recognizing infill development and redevelopment is necessary to promote and support fiscally strong, sustainable, and livable centers;
- Supporting compact, multi-functional urban centers through the adoption and support of policies that reduce urban sprawl;

¹ See <http://www.lcd.state.or.us/tgm/pub/1infill.htm>, Transportation and Growth Management Program (Oregon).

- Encouraging communities to include a redesign step, involving citizens in the redesign initiative prior to redevelopment;
- Adopting macro-level urban policies and providing local governments with the flexibility to determine and address their urban priorities;
- Enhancing the linkages between land and water use planning and transportation planning for current and future designated urban areas;
- Amending existing concurrency requirements for urban areas in order to promote redevelopment efforts where such changes do not jeopardize public health and safety;
- Requiring that all proposed developments receive a full-cost accounting review in order to provide a more accurate estimate of the true development costs incurred by the local government;
- Requiring general-purpose local governments, school boards, and local community colleges to coordinate on educational issues, including planning functions and the development of joint facilities;
- Promoting mass transit systems for urban centers, including multi-modal transportation feeder systems;
- Integrating state programs that have been developed to promote economic development and neighborhood revitalization through incentives in order to promote the development of designated urban infill areas; and
- Encouraging the location of appropriate public facilities within urban centers.²

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.³ The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The bill provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated \$2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program.

In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. The Florida Local Government Development Agreement Act was revised to provide certain assurances to the developer of a brownfields site. Also, it amended annexation laws to allow for the annexation of an unincorporated area through a single referendum of the residents in the area proposed for annexation. The bill authorized the use of eminent domain for an unincorporated enclave surrounded by a community development district. It also established procedures for a county or combination of counties and municipalities to develop and adopt plans to improve efficiency, coordination, and delivery of local services. Finally, the legislation created the State Housing Tax Credit Program authorizing tax credits to be issued against the state corporate income tax and established the Urban Homesteading Program within the Governor's Office to make single-family housing properties available to eligible low-income buyers.

² Report on the Development of a State Urban Policy, Legislative Committee on Intergovernmental Relations, February 1998 at 99-102.

³ Ch. 99-378, s. 1, Laws of Fla.

The Legislature has provided incentives for a local government that has adopted an urban infill and redevelopment plan.⁴ These incentives include the issuance of revenue bonds under s. 163.385, F.S., and the option of employing tax increment financing under s. 163.387, F.S., to finance the implementation of the plan. Further, a local government that has adopted an urban infill and redevelopment plan may exercise the powers of a community redevelopment neighborhood improvement district under s. 163.514, F.S., that includes the authority to levy a special assessment. An area designated as an urban infill and redevelopment area is given a priority in the allocation of private activity bonds from the state pool under s. 159.807, F.S. Notwithstanding the incentives for urban infill and redevelopment, there are persistent barriers to urban infill and redevelopment projects.

III. Effect of Proposed Changes:

Section 1 creates the 2005 Smart Growth Study Commission. The commission consists of 15 voting members with the Governor, President of the Senate, and the Speaker of the House of Representatives each appointing 5 members. The chair of the commission is to be selected by the Governor from his or her appointees and will vote only if there is a tie vote. The commission shall also have the following ex officio members: the secretaries of the Department of Transportation, DCA, and the Department of Environmental Protection and the Commissioner of Agriculture or their designees; two members of the House of Representatives appointed by the Speaker; and two Senators appointed by the President of the Senate.

The members of the commission are to be appointed by July 1, 2004, and the first meeting held by September 1, 2004. A vacancy on the commission will be filled in the same manner as the original appointment. The Governor, Speaker of the House of Representatives, and the President of the Senate must each appoint members that represent each of the following: business interests, including development and real estate; agricultural interests, including farming, aquaculture, ranching, and forestry; local and regional governments; environmental interests, including nonprofit organizations that promote conservation or protection of natural resources; and citizens organizations, including community associations, citizen groups, and affordable housing groups.

The bill specifies voting procedures. Each member is entitled to one vote. Actions taken by the commission require a two-thirds approval. A majority of the members constitutes a quorum and is required for the commission to take action. The commission is tasked with reviewing the state's growth management programs and laws, including, but not limited to, chs. 163, 186, 187, and 380, F.S. Following this review, the bill requires the commission to make specific recommendations relating to:

- Methods of improving, modifying, or replacing the current system of growth management with alternatives that have a higher likelihood of significantly improving the management of growth;
- Programs that would provide necessary incentives to promote and encourage urban infill and redevelopment;

⁴ Section 163.2520, F.S.

- The identification of the appropriate agency, or combination of agencies, or the creation of a new agency to provide appropriate oversight and partner with local and regional governments;
- The enhancement of public participation at all levels of decisionmaking involving growth management;
- Necessary certainty regarding where, when, and how development will be encouraged and promoted;
- Coordination, incentives, and funding for state, regional, and local government entities that share the responsibility for relieving overcrowded conditions in schools, easing traffic congestion, protecting the state's natural resources; and
- Existing private property rights in a growing economy that must be maintained to ensure that all sectors of the state's economy share in an improved quality of life.

The commission is required to hold at least eight public hearings, that are conducted every 60 days, at different locations throughout the state. At these hearings, the commission will solicit input from public the public and interest groups, including suggestions for better coordination local, state, and regional growth management programs.

Under this bill, the commission may appoint technical advisory committees and members of these committees are entitled to per diem and travel expenses. The commission must provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2005. The DCA must prepare legislative recommendations consistent with the commission's report for consideration by the 2006 Legislature.

The bill authorizes the commission to appoint an executive director and also allows the commission to hire consultants if those costs can be funded by the appropriation in this bill. The DCA must provide staff assistance to the commission and its executive director. Commission members are entitled to reimbursement for per diem and travel expenses.

Section 2 of the bill appropriates \$300,000 from the General Revenue Fund to DCA to implement the provisions of the bill.

Section 3 provides that the bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers.⁵ The bill creates a “commission,” which is required by s. 20.03(10), F.S., to be created within a department, the office of the Governor, or the Executive Office of the Governor. As such, the Governor is authorized to appoint all executive branch officers, though the Legislature is authorized to provide for Senate confirmation under Article IV, s. 6 of the State Constitution.⁶ The bill provides for legislative officers, as well as the Governor, to appoint members and does not provide for Senate confirmation.

While this entity is designated a “commission,” however, its powers do not appear to meet the definition of a commission as it does not exercise limited quasi-legislative or quasi-judicial powers, or both, independently. Instead, the entity appears to be a council, as provided in s. 20.03, F.S. (see, *infra*). While the definition of a “council” does not specifically require it to be created within or adjunct to an executive branch entity, a council is still within the executive branch and the same appointment requirements would appear to apply.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits the commission to appoint an executive director. Further, the bill requires DCA to provide staff assistance to the commission and its executive director. Commission members, as well as, members of technical advisory committees appointed by the commission, are entitled to per diem and travel expenses. The bill authorizes the department, upon the commission’s request, to reimburse consultants if the costs can be funded from the appropriation. The bill appropriates \$300,000 from the General Revenue Fund for implementation of the provisions of the bill.

VI. Technical Deficiencies:

Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03 (10), F.S., defines a “commission,” unless otherwise required by the State Constitution, to mean:

⁵ *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

⁶ While the ultimate choice of an appointee to an executive branch office resides with the Governor, the Legislature has established processes which limit the choices that are available to the Governor for appointment to a statutory office. For example, the Governor is required to select the head of the Department of Transportation from a list of three nominees forwarded to him by the Florida Transportation Commission.

. . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and *exercising limited quasi-legislative or quasi-judicial powers, or both, independently* of the head of the department or the Governor [*emphasis added*].

Section 20.03(7), F.S., defines the term “council” or “advisory council” to mean:

. . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and *to provide recommendations and policy alternatives* [*emphasis added*].

The entity that is created by the bill is called a “commission” but it does not appear to meet the statutory definition of a “commission” that is provided in s. 20.03(10), F.S. Instead, it appears to meet the definition of a “council” that is provided in s. 20.03(7), F.S., as its powers are stated on page 4, line 4 to page 5, line 3 to make “. . . specific recommendations relating to . . .” particular issues and then to file a report with the Governor, the President of the Senate, and the Speaker of the House.

Further, under the definitions of a “council” and a “commission” provided under s. 20.03, F.S., a commission is a body created within a department, the office of the Governor, or the Executive Office of the Governor. The commission created by this bill is not created adjunct to any entity. The definition of “council” does not include a requirement that the entity be created within a department, the office of the Governor, or the Executive Office of the Governor.

Section 20.052(5)(a), F.S., requires the private citizen members of a commission or board of trustees that is adjunct to an executive agency to be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.

On page 1, line 21, delete the words “quality and life” and insert “quality of life.”

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

Bill No. SB 2554Amendment No. Senate

CHAMBER ACTION

House

GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY

DATE:

4-16-04

TIME:

3:15 P.m.

Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. (1) The 2005 Smart Growth Study Commission is created. The commission shall be composed of 15 voting members, five appointed by the Governor, five appointed by the President of the Senate, and five appointed by the Speaker of the House of Representatives. The Governor shall select a chair from his or her appointees, but the chair shall vote only in case of a tie vote. The secretaries of the Department of Transportation, the Department of Community Affairs, and the Department of Environmental Protection, the Commissioner of Agriculture, and the executive director of the Fish and Wildlife Conservation Commission, or their designees, shall serve as nonvoting ex officio members of the commission. In addition, the President of the Senate and the Speaker of the House of Representatives shall each appoint two members from their respective chambers to serve on the commission as

Bill No. SB 2554Amendment No.

1 nonvoting ex officio members.

2 (2) Initial appointments shall be made by July 1,
3 2004, and the first meeting of the commission shall be held by
4 September 1, 2004. Any vacancy shall be filled in the same
5 manner as the original appointment. The Governor's
6 appointments shall include one representative from each of the
7 following categories:

8 (a) Business interests, including development and real
9 estate;

10 (b) Agricultural interests, including farming,
11 aquaculture, ranching, and forestry;

12 (c) Municipal and county governments;

13 (d) Environmental interests, including nonprofit
14 organizations that promote conservation or protection of
15 natural resources; and

16 (e) Citizen organizations, including community
17 associations, citizen groups, and affordable housing groups.

18
19 The appointments of voting members by the President of the
20 Senate and the Speaker of the House of Representatives must
21 also include one representative from each of the categories in
22 paragraphs (a)-(e).

23 (3) Each commission member is entitled to one vote
24 unless otherwise specified in this section. Action of the
25 commission requires a two-thirds vote of the voting members
26 present. Action may not be taken if fewer than a majority of
27 all voting members are present.

28 (4) The commission shall review the operation and
29 implementation of the state's growth management programs and
30 laws, including, but not limited to, chapters 163, 186, 187
31 and 380, Florida Statutes, for the purpose of making specific

Bill No. SB 2554Amendment No.

1 recommendations relating to:

2 (a) Determining methods to substantially improve,
3 modify, or replace the current system of controls and
4 incentives for managing growth with alternatives that have a
5 higher likelihood of significantly improving the
6 growth-management system;

7 (b) Implementing programs that provide necessary
8 incentives, including financial incentives, to promote and
9 encourage the redevelopment, improvement and, where
10 appropriate, infill of existing developed areas;

11 (c) Determining the most appropriate agency,
12 combination of agencies, or the creation of a new agency to
13 effectively implement a partnership and appropriate oversight
14 role with local and regional governments for growth
15 management;

16 (d) Enhancing the ability of state residents to more
17 readily and at less cost participate at all levels of
18 decisionmaking involving growth management;

19 (e) Providing development interests with necessary
20 certainty regarding where, when, and how development will be
21 encouraged and promoted;

22 (f) Providing coordination, incentives, and funding
23 programs that jointly share, among state, regional, and local
24 government entities, the responsibility for relieving the
25 crowded conditions in the state's schools, easing the
26 congestion on highways in the state, and protecting the
27 state's natural resources;

28 (g) Revising the development-of-regional-impact
29 process to streamline and reduce duplication in the
30 application for development approval and to make any necessary
31 changes to the criteria used in determining whether a proposed

Bill No. SB 2554Amendment No.

1 change constitutes a substantial deviation requiring further
2 review; and

3 (h) Maintaining existing private property rights in a
4 growing economy so that all sectors of the state's economy
5 share in an improved quality of life.

6 (5) The commission shall hold at least eight public
7 hearings, conducted every 60 days, at different locations
8 throughout the state. At each hearing the commission shall
9 solicit input from the public on the effectiveness of
10 Florida's growth-management system, with particular attention
11 to suggestions for how local, state, and regional agencies and
12 governments can better coordinate growth-management programs.

13 (6) By January 1, 2006, the commission shall provide
14 to the Governor, the President of the Senate, and the Speaker
15 of the House of Representatives, a report with specific
16 recommendations concerning all issues identified in paragraphs
17 (4) (a) - (h). The Department of Community Affairs shall prepare
18 legislative recommendations consistent with the commission's
19 report for consideration by the 2006 Legislature.

20 (7) The commission may appoint technical advisory
21 committees. Commission members, and the members of any
22 technical advisory committee that is appointed, may not
23 receive remuneration for their services, but members other
24 than public officers and employees are entitled to be
25 reimbursed by the Department of Community Affairs for travel
26 or per diem expenses in accordance with section 112.061,
27 Florida Statutes. Public officers and employees shall be
28 reimbursed by their respective agencies in accordance with
29 section 112.061, Florida Statutes.

30 (8) The commission may appoint an executive director,
31 who shall report to the commission and serve at its pleasure.

Bill No. SB 2554Amendment No.

1 The Department of Community Affairs shall provide the
2 commission and the executive director with staff assistance.
3 The department may, upon the request of the commission,
4 reimburse consultants if such costs can be funded from the
5 appropriation provided for in this act.

6 (9) All agencies under the control of the Governor are
7 directed, and all other agencies are requested, to render
8 assistance and cooperation to the commission.

9 (10) The commission shall continue in existence until
10 its public hearings and written report are complete, but not
11 later than January 1, 2006.

12 Section 2. The sum of \$300,000 is appropriated from
13 the General Revenue Fund to the Department of Community
14 Affairs for the purpose of implementing this act.

15 Section 3. This act shall take effect upon becoming a
16 law.

17
18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete everything before the enacting clause

22
23 and insert:

24 A bill to be entitled
25 An act relating to the 2005 Smart Growth Study
26 Commission; creating the commission; providing
27 for its membership and requirements for voting;
28 providing for appointments by the Governor, the
29 President of the Senate, and the Speaker of the
30 House of Representatives; requiring the
31 Secretary of Transportation, the Secretary of

Bill No. SB 2554

Amendment No. ____

1 Community Affairs, the Secretary of
2 Environmental Protection, the Commissioner of
3 Agriculture, and the executive director of the
4 Fish and Wildlife Conservation Commission, or
5 their designees, to serve as ex officio
6 nonvoting members; requiring the commission to
7 review the state's growth management programs
8 and laws and make recommendations; requiring
9 public hearings; requiring the Department of
10 Community Affairs to provide staff support;
11 providing for expiration of the commission;
12 providing an appropriation; providing an
13 effective date.

14
15 WHEREAS, economic growth is critical to Florida's
16 residents' quality of life and protection of Florida's
17 irreplaceable natural resources is of great importance to all
18 residents, and

19 WHEREAS, the Florida Legislature enacted laws in 1972,
20 1975, 1984, and 1985 to effectively manage growth and
21 development, and

22 WHEREAS, current growth patterns have resulted in
23 crowded schools and roads, inadequate funds to provide for
24 needed infrastructure, and increasing threats and damage to
25 our unique natural areas, and

26 WHEREAS, the valuable and necessary role of the public
27 in working with elected and appointed bodies to manage growth
28 has become increasingly more difficult due to time
29 constraints, costs, and legal complexities, and

30 WHEREAS, the Legislature has regularly convened study
31 commissions to review, examine, and make recommendations for

Bill No. SB 2554

Amendment No. ____

1 improving the effectiveness of growth management programs at
2 local, state, and regional levels of government, and

3 WHEREAS, the Legislature is not satisfied to continue
4 the pattern of piecemeal revisions to existing growth
5 management programs and believes a new direction for managing
6 growth must be in place as Florida assumes its position as the
7 nation's third-largest state within the next 15 years, and

8 WHEREAS, the Legislature sees a need to convene an
9 informed body to comprehensively review alternatives to better
10 manage the state's projected growth while effectively
11 addressing the impacts of existing development not currently
12 being addressed, NOW, THEREFORE,

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1598

SPONSOR: Senator Smith

SUBJECT: Retirement

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper 	Yeatman 	CP	Favorable
2.	Wilson 	Wilson 	GO	
3.			BI	
4.			AG	
5.			AP	
6.				

I. Summary:

The bill provides that members of the Special Risk Class in the Florida Retirement System (FRS) who are catastrophically injured in the line of duty and unable to perform the duties of their position, as opposed to any employment, will be declared totally and permanently disabled for retirement purposes, unless proven otherwise by the Secretary of the Department of Management Services. The bill funds the benefit increase by an employer-paid increase to the FRS and provides a statement of important state interest.

This bill substantially amends s. 121.091, Florida Statutes, and creates two undesignated sections of Florida law.

II. Present Situation:

Disability Benefits Available to FRS Members

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement benefits to some 625,000 active employees and income security to some 200,000 retired members of its 837 member public employers. Since 2001 it has offered members both a defined benefit, or percent of final pay "Pension Plan," plan and an equity share, or defined contribution "Investment Plan" alternative. The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment regardless of their pension choice. All state and county employees, including the state universities and the state community colleges, are compulsory members of the FRS. Cities and special districts may choose to participate in the FRS and may choose which, or all, of their employee groups participate in the FRS – police, fire, general, or elected. Benefits in the FRS are distributed among six different membership classes. Each has a uniform qualification, or vesting, period for benefits with different accrual, or yearly values, unique to the class. The Special Risk and

Special Risk Administrative Support Classes provide enhanced normal benefits to law enforcement, correctional, firefighter, and other first responder professionals. Normal unreduced benefits are available upon the earlier attainment of 25 years' service or age 55.

Under s. 121.091(4), F.S., any member of the FRS who is totally and permanently disabled from useful and efficient service as an officer or employee due to any condition or impairment of health caused by an injury or illness is entitled to disability benefits. Paragraph (4)(b) provides that a

“... member shall be considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.”

The term "officer or employee" is defined in s. 121.021(11), F.S., as

“...any person receiving salary payments for work performed in a regularly established position and, if employed by a city or special district, employed in a covered group.”

If the injury or illness arises out of and in the actual performance of duty required by his job, the member is entitled to in-line-of-duty disability benefits. Section 121.021(13), F.S., defines “disability in-line-of-duty” as

“...an injury or illness arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer.”¹

There are several important differences in the laws applicable to disability benefits, depending on whether the disability is found to be due to an injury or illness “suffered in the line of duty”:

- *Eligibility.*— An FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, an FRS member must have 8 years of creditable service before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty².
- *Threshold Benefit Amount.*— The level of disability benefit to which a disabled member is minimally entitled depends upon whether his/her disabling injury or illness was job related. If the disabling injury or illness occurs in the line of duty, the benefit will be at least 42percent of the member's average final compensation (AFC) as of the disability

¹ Furthermore, this section provides that disability resulting from drug or alcohol abuse is not to be considered in the line of duty, except when the member is expected to use alcohol in the course of his or her official work in undercover law enforcement, and such use clearly results in the member's disability. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

² Under current law, any member with less than 5 years of creditable service on July 1, 1980, or any person who joins the FRS on or after that date must complete 10 years of creditable service to qualify for disability benefits for a disability that is not job-related. Otherwise, 5 years of creditable service is required to qualify for a non-duty disability benefit. Effective July 1, 2001, the 10-year service requirement is reduced to 8 years.

retirement date. For special risk members retiring on or after July 1, 2000, the in-line-of-duty disability benefit threshold is 65percent of AFC as of the disability retirement date. If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25percent of AFC.

- *Burden of Proof.*— Unless a legal presumption applies such as the one provided under s. 112.18, F.S., the member must show by competent evidence that the disability occurred in the line of duty to qualify to receive the higher in-line-of-duty disability benefits.

Under s. 112.19(2)(h), F.S., any full-time law enforcement, correctional, or correctional probation officer who suffers catastrophic injury [as defined in s. 440.02(38), F.S. 2002] - his/her spouse and minor dependent(s) will have their entire health insurance premium paid for by his/her employer.

Non-FRS Pension Plans

Municipal police and firefighter pension plans all have individually negotiated disability income provisions. For a number of plans the inability to render useful and efficient service as an officer itself is the only governing standard. Both chapters 175 and 185, F.S., establish a framework for the development of a benefit package by the more than 500 plans in the state. The actual terms and conditions vary individually.

“Catastrophic Injury”

Chapter 440, F.S., governs the standards for workplace injury and its compensation. Section 440.02(38), F.S. (2002), defined a catastrophic injury as a permanent impairment affecting the spinal cord, limb, brain or head injury, burns, blindness, or

“...any other injury that would otherwise qualify ... an employee to receive disability income benefits under Title II or supplemental income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.”³

However, section 1 of ch. 2003-412, L.O.F., deleted this definition and included much of the substance of the definition in what constitutes “permanent total disability” in s. 440.15(1)(b), F.S.⁴

III. Effect of Proposed Changes:

Section 1 makes a declaration of important state interest in compliance with Article VII, s. 18, State Constitution.

Section 2 amends s. 121.091(4), F.S., to provide that members of the Special Risk Class who are catastrophically injured in the line of duty and unable to perform the duties of their position, as opposed to any employment, may be declared totally and permanently disabled for retirement

³ The 1992 version of 42 USCS s. 1382c, section (a)(3)(A) provides that “an individual shall be considered to be disabled ... if he is unable to engage in any substantial gainful activity by reason of any medical determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.”

⁴ It does not include the social security eligibility standard.

purposes. Specifically, a Special Risk Class member of the FRS who is employed as a law enforcement, correctional or correctional probation officer; firefighter, emergency medical technician, or paramedic who is catastrophically injured, as defined in s. 440.02, F.S., 2002, in the line of duty shall be considered totally and permanently disabled, unless proven otherwise by the Secretary of the Department of Management Services.

Section 3 creates an undesignated portion of Florida Law to provide a 2- and 14-basis point (.02 percent and .14 percent) employer paid increase to the Special Risk and Special Risk Administrative Support Classes of the FRS to fund the benefit.

Section 4 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsection (a) provides that all “mandates” must fulfill an important state interest, and must additionally meet one of the following five conditions in order to effectively bind local governments to the general law:

- the Legislature funds the mandated activity or program;
- the Legislature provides a revenue source sufficient to fund the mandate;
- the law passes by 2/3 membership of each house of the Legislature;
- the expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments; and
- the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision. These exemptions include:

- laws adopted to require funding of pension benefits existing as of 6/11/90;
- criminal and election laws, and laws creating, modifying, or repealing non-criminal infractions;
- general and special appropriations acts;
- laws reauthorizing but not expanding then-existing statutory authority; and
- laws having insignificant fiscal impact.

Section 3 of the bill creates an undesignated portion of Florida Law to provide a 2- and 14-basis point (.02 percent and .14 percent) employer paid increase to the Special Risk and Special Risk Administrative Support Classes of the FRS to fund the benefit. The Division of Retirement (division) of the Department of Management Services estimated that this increase will cost all local governments, to include counties and municipalities, \$406,000 in FY 04/05, and \$426,000 in FY 05/06. On March 19, 2004, the division’s external consulting actuary revised this fiscal impact upward and recommended that the

basis point impact be raised from 2 to 3 basis points for the Special Risk Class and from 14 to 20 basis points for the Special Risk Administrative Support Class.

Because the estimate of annual fiscal impact is less than \$1.73 million, it is exempted from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 3 of the bill creates an undesignated portion of Florida Law to provide a 2- and 14-basis point (.02 percent and .14 percent) employer paid increase to the Special Risk and Special Risk Administrative Support Classes of the FRS to fund the benefit. The division estimates that this increase will cost all local governments \$406,000 in FY 04/05, and \$426,000 in FY 05/06. In addition, the division estimates that this increase will cost state \$180,000 in FY 04/05, and \$189,000 in FY 05/06.

On the basis of the actuary's March 19, 2004 recommendation, the revised fiscal impact is \$887,000 for FY 2005. It increases five percent in each of the subsequent two years to reach \$ 931,000 in FY 2006 and \$ 977,000 in FY 2007.

D. Other Constitutional Issues:

Section 14 of Article X, State Constitution, requires all publicly funded pension plans to prefund promised benefits in a sound actuarial manner. The bill is out of compliance with this provision in light of the March 19, 2004 revised actuarial impact statement from the division's actuary. Part VII of ch. 112, F.S., also prohibits the use of any valuation methodology that has the effect of transferring unfunded risk from present to future generations of taxpayers.

VI. Technical Deficiencies:

Division staff notes that this bill redefines "officer" under s. 121.091(4), F.S. to be limited to those Special Risk Class members eligible for a total and permanent disability presumption proposed in this bill. They suggest that this change could cause confusion and possibly conflict in the application of s. 121.091, F.S. The division recommends that the proposed language be amended to clearly establish a separate standard for total and permanent in-line-of-duty disability for the specified select group of Special Risk Class members.

The division also notes that the bill proposes that the affected Special Risk Class members who are disabled in the line of duty may be considered total and permanent if their injury is catastrophic as defined in s. 440.02(38), F.S., 2002. Under current law, it is likely that an FRS member who was catastrophically injured as defined in s. 440.02(38), F.S., 2002, would already qualify for in-line-of-duty disability retirement. This bill introduces a standard for total and permanent in-line-of-duty disability that was designed for workers' compensation coverage/funding, not the funding assumptions of the FRS.

Finally, it is awkward to reference a definition that does not exist in current statutes. The bill references the term "catastrophically injured as defined in s. 440.02, Florida Statutes 2002..." This definition was deleted in s. 1, ch. 2003-412, L.O.F. The sponsor should consider amending the bill to include a specific definition to "catastrophically injured" in ch. 121, F.S. The effect is to void, for the purposes of this bill, the changes made to Workers' Compensation statutes by the 2003 Legislature and to readopt a more relaxed standard for the definition of catastrophic injury.

The conformance reference to s. 121.071, F.S., is erroneous in s. 3 of the bill. The correct cross-reference should be to s. 121.171, F.S., since that is where the uniform payroll contribution rates are located.

VII. Related Issues:

There will a delayed effect upon participants in the Investment Plan that will have to be gauged in future actuarial valuations and experience studies of the FRS. Very few FRS members eligible for the two classes in this bill have enrolled in this defined contribution alternative so the immediate impact is not material.

VIII. Amendments:

None.

Th8s Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 1598Amendment No. 

244066

#1

CHAMBER ACTION

SenateHouse.
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.**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY****DATE:** 4-16-04**TIME:** 10:55 A.m.

Senator Wise moved the following amendment:

Senate Amendment

On page 3, lines 3-4, delete the words "s. 440.02,
Florida Statutes 2002,"

and insert: s. 121.091(4)

Bill No. SB 1598

Amendment No. _____



445342

CHAMBER ACTION

SenateHouse

**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

DATE: 4-16-04

TIME: 10:55 A.M.

Senator Wise moved the following amendment:

Senate Amendment

On page 3, line 18, delete the number "0.02"

and insert: 0.03

Bill No. SB 1598

Amendment No. _____



450470

CHAMBER ACTION

SenateHouse

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GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY

DATE: 4-16-04TIME: 10:55 A.m.

Senator Wise moved the following amendment:

Senate AmendmentOn page 3, line 23, delete the number "0.14"and insert: 0.20

#4

Bill No. SB 1598

Amendment No. _____



652116

CHAMBER ACTION

SenateHouse.
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.**GOVERNMENTAL OVERSIGHT
AND TRANSPARENCY****DATE** 4-16-04**TIME** 10:55 A.m.

Senator Wise moved the following amendment:

Senate Amendment (with title amendment)On page 3, line 29, delete the number "121.071"and insert: 121.171

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, line 12, delete the number "121.071"

and insert:

121.171

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

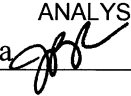

BILL: SB 1720

SPONSOR: Senator Margolis

SUBJECT: Regional Cultural Facilities

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea 	Wilson 	GO	
2.			CP	
3.			ATD	
4.			AP	
5.				
6.				

I. Summary:

The bill revises the criteria for awarding a regional cultural facility grant by the Division of Cultural Affairs of the Department of State provided in s. 265.702, F.S., to provide that the primary considerations for any grant award are the quality of the proposed project and the reliability of the prospect of achieving the required match. The bill does not change the total annual maximum grant award to a facility nor does it change the total maximum for grants awarded to a facility over a set period of time; however, it does change the maximum number of years from 5 to 10 over which the \$10 million maximum can be reached and what constitutes total cost of a regional cultural facility. The bill changes requirements of total cost, one criteria upon which annual and total maximum grant awards are calculated. Finally, the bill allows for the use of grant funds to repay funds the county, municipality, or qualified corporation for construction costs incurred for the regional cultural facility from the time of commencement to the time the grant funds are made available.

This bill amends section 265.702 of the Florida Statutes.

II. Present Situation:

From 1988 to 2002, the only state funding for cultural facilities through the Division of Cultural Affairs (division) of the Department of State (department) was moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of "cultural facilities."¹

¹ Section 265.701, F.S.; see, also, *Guidelines for Cultural Facilities Grants*, Department of State, defines "cultural facility" as a building which houses an organization whose primary function is the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folk arts, photography, crafts, media arts, and historical and science museums.

The funding for such facilities was limited to a maximum grant amount of \$5,000 that could be requested in any year; a maximum of \$1.5 million within 5 consecutive fiscal years; and a requirement that a facility or applicant reaching the 5 year cap had to wait at least one year before re-applying.

In 2002, s. 265.702, F.S., relating to regional cultural facilities was created and took effect July 1, 2002.² This provided a second type of funding mechanism for cultural facilities that mirrored many provisions of the original cultural facilities grant language in s. 265.701, F.S., but was directed to facilities of regional impact for which the assistance available, if appropriated, would be significantly greater than that for other cultural facilities. This section provides that the division may accept and administer moneys that are appropriated to it for providing grants to counties, municipalities, and qualified corporations for the acquisition, renovation, or construction of regional cultural facilities.³ In order to be eligible, the cultural facility must:

- ▶ Be a fixed facility that is primarily engaged in cultural programs;
- ▶ Have educational programs of excellence and facilities, space, and staff dedicated to the development and delivery of such cultural programs;
- ▶ Present cultural programs or exhibits that are of national or international renown or reputation;
- ▶ Have, within a 150-mile radius of the facility, a service area that includes regular attendees, clients, or program participants; and
- ▶ Have a documented proposed acquisition, renovation, or construction cost of at least \$50 million.

A state grant awarded under this program must be matched by a contribution from the county, municipality, or nonprofit corporation in an amount equal to \$2 for each \$1 awarded. In-kind contributions of goods or services may be counted toward 50 percent of the required match. Any such in-kind contribution, however must be documented and valued at the fair-market value to the facility; directly related to the facility's acquisition, renovation, or construction; and, not be in the form of a lease.

Documented expenditures made for project purposes during the 3 years immediately preceding the award of a grant may be used as in-kind match.

The Florida Arts Council must review each grant application and submit annually to the Secretary of State for approval a list of all applications received and its recommendations, arranged in order of priority. The division may allocate grants only for regional cultural facilities that are approved by the Secretary or for which funds are appropriated by the Legislature.

Unlike the funding for the cultural institutions grants, the regional cultural facilities grant program provides that the annual amount of a grant may not exceed the lesser of \$2.5 million or 10 percent of the total costs of the regional cultural facility. Further, the total amount of the

² See, ch. 2002-267, L.O.F.

³ Section 265.702(2), F.S., defines a "qualified corporation" as a corporation that is designated as a not-for-profit corporation pursuant to s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code, that is described in and allowed to receive contributions under s. 170 of the Internal Revenue Code, and that is a corporation not for profit incorporated under ch. 617, F.S.

grants awarded to a regional cultural facility in a 5-year period may not exceed the lesser of \$10 million or 10 percent of the total costs of a regional cultural facility. The total cost of a regional cultural facility is required to be calculated with respect to the primary scope of the original proposal as submitted and is not permitted to include the cost of any additions that change the scope of the facility, such as additional facilities or significant design alterations.

Funding of \$2.5 million each was requested in FY 2003-04, but not appropriated, for the City of Tampa/Tampa Museum of Art – New Museum Facility (ranked #1) and the Miami-Dade County Performing Arts Center/PAVGM: Stage Compensating Lift/Vari-Lite System (ranked #2). These requests are on the FY 2004-05 Regional Cultural Facilities Program Rollover Priority List. According to the department, these organizations also submitted application to the Cultural Facilities Program for the same project.⁴

III. Effect of Proposed Changes:

The bill revises the criteria for a regional cultural facility grant award by the Division of Cultural Affairs of the Department of State provided in s. 265.702, F.S., to provide that the primary considerations for any grant award are the quality of the proposed project and the reliability of the prospect of achieving the required match.

The bill does not change the total annual maximum grant award to a facility nor does it change the total maximum for grants awarded to a facility over a set period of time; however, it does change the maximum number of years from 5 to 10 over which the \$10 million maximum can be reached and what constitutes total cost of a regional cultural facility.

The bill changes requirements of total cost, one criteria upon which annual and total maximum grant awards are calculated. Currently, total cost of a facility is calculated on the primary scope of the original proposal submitted and prohibits inclusion of costs of additions that change the scope of the facility, such as additional facilities or significant design alterations. The bill deletes the current prohibition and allows for adjustments to the total project cost by changes in scope to reflect unexpected costs, incorporation of alternatives elected for reasons of aesthetics or cost or modifications of design provided the changes do not exceed 25 percent of the original total cost proposed and do not change the basic nature of the project.

Finally, the bill allows for the use of grant funds to repay funds the county, municipality, or qualified corporation for construction costs incurred for the regional cultural facility from the time of commencement to the time the grant funds are made available. Currently, a facility can only use years of documented expenditures made for project purposes during the 3 years immediately preceding the award of a grant as in-kind match.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ Information obtained from the Department of State's website relating to regional cultural facilities – www.florida-arts.org/grants/regionalcultural/index.htm.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the department's fiscal analysis, extending the timeframe for additional funding eligibility, from 5 years to 10 years, would limit funding opportunities for subsequent phases. In addition, the department states that if an organization received the maximum \$2.5 million allowed per year, the \$10 million cap would be reached in 4 years and no further applications, therefore, could be made for 6 additional years.

C. Government Sector Impact:

According to fiscal information provided by the Department of State (department), rule amendment would be required in the second half of FY 2004-05. Also, according to the department, s. 265.702(8), F.S., created by the bill, will require increased monitoring related to expenditures and reporting resulting in the OPS request in the amount of \$14,440.00.

Additionally, the following comments, which could impact both revenues and expenditures of local governments, were made in the fiscal analysis of the bill by the department:

- ▶ Local government applicants could be put at a minor disadvantage under the priority weight being added to the review criteria on reliability of proposed match being realized. Many local governments, particularly municipalities, are precluded from fully committing their own funds until all other project funds have been secured. The first application would not likely be affected in scoring but failure to begin work on the project in a timely manner after the first grant is awarded would affect future applications.
- ▶ Extending the timeframe for additional funding eligibility would limit funding opportunities for subsequent phases. If an organization received the \$2.5 million maximum allowed each year, the overall maximum of \$10 million would be reached in 4 years and no further applications [for grant funding] could be made for 6 additional years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 1720

Amendment No. _____



061408

CHAMBER ACTION

SenateHouse.
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LEGISLATIVE OVERSIGHT
 THE PRESIDENCY
 DATE 4-15-04
 TIME 3:00 P.M.

Senator Aronberg moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (7) of section 265.702, Florida Statutes, is amended, present subsection (8) of that section is redesignated as subsection (9), and a new subsection (8) is added to that section, to read:

265.702 Regional cultural facilities; grants for acquisition, renovation, or construction; funding; approval; allocation.--

(7) The annual amount of a grant made under this section may not exceed the lesser of \$2.5 million or 10 percent of the total costs of the regional cultural facility. The total amount of the grants awarded to a regional cultural facility in a 10-year ~~5-year~~ period may not exceed the lesser of \$10 million or 10 percent of the total costs of a regional cultural facility. The total cost of a regional cultural facility must be calculated with respect to the primary scope

Bill No. SB 1720Amendment No. 

061408

1 of the original proposal as submitted under this section.
2 However, because it is recognized that major projects as
3 contemplated by this section often require changes in scope to
4 reflect unexpected costs, the incorporation of alternatives
5 elected for reasons of aesthetics or cost, or modifications of
6 design, the total cost of a regional cultural facility project
7 may be adjusted by additions to or modifications of the
8 project as originally proposed so long as the cost of such
9 additions or modifications does not exceed 25 percent of the
10 total cost as originally proposed and does not change the
11 basic nature of the proposed project and-may-not-include-the
12 cost-of-any-additions-that-change-the-scope-of-the-regional
13 cultural-facility;-such-as-additional-facilities-or
14 significant-design-alterations.

15 (8) State funds granted under this section for a
16 project commenced prior to the award of such funds may be used
17 to repay the county, municipality, or qualified corporation
18 for project construction costs incurred from the commencement
19 of the project to the time at which funds are made available
20 in accordance with rules adopted by the Division of Cultural
21 Affairs of the Department of State.

22 Section 2. Paragraph (b) of subsection (6) of section
23 265.606, Florida Statutes, is amended to read:

24 265.606 Cultural Endowment Program; administration;
25 qualifying criteria; matching fund program levels;
26 distribution.--

27 (6)

28 (b) The investment objectives of the trustee are to
29 preserve the principal amount of each endowment while
30 maximizing current income through the use of
31 investment-quality financial instruments of the types set

Bill No. SB 1720

Amendment No. _____



061408

1 forth in rules promulgated by the department. The minimum net
2 cost market-value of \$600,000 for each individual endowment in
3 a local cultural endowment program fund shall be maintained.

4 Section 3. This act shall take effect upon becoming a
5 law.

6
7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete everything before the enacting clause

11
12 and insert:

13 A bill to be entitled

14 An act relating to regional cultural
15 facilities; amending s. 265.702, F.S.; revising
16 the time period during which a specified total
17 amount of grants may be awarded to a regional
18 cultural facility; providing for adjustment of
19 the total cost of a regional cultural facility
20 project within specified limits; providing for
21 the use of grant funds if commencement of a
22 project occurs prior to the award of such
23 funds; amending s. 265.606, F.S.; revising a
24 requirement for receipt of state matching funds
25 by a local sponsoring organization under the
26 Cultural Endowment Program; providing an
27 effective date.

7

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

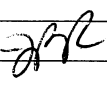

BILL: CS/SB 1870

SPONSOR: Agriculture Committee, Senator Crist, and others

SUBJECT: Lowry Park Zoo

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Fav/CS
2.			NR	WD
3.	Rhea 	Wilson 	GO	
4.			AGG	
5.			AP	
6.				

I. Summary:

The 41-acre Lowry Park Zoo in Tampa, Florida, has been serving as a center for conservation and preservation of endangered wildlife since opening in 1988. This bill designates the zoo as the state center for Florida species conservation and biodiversity, including captive breeding, animal husbandry, conservation education, and veterinary care and rescue, rehabilitation, research, and release of Florida's endangered and threatened species consisting of the Florida manatee, panther, red wolf, Key deer, Key Largo wood rat, and whooping crane. This recognition shall not be construed as exempting the Lowry Park Zoo from the regulatory purview of the Florida Fish and Wildlife Conservation Commission.

The Lowry Park Zoo has indicated that this designation would attract national funding that would enable it to provide care for Florida's endangered species, further develop its conservation and research programs and develop stronger partnerships and other professional collaborations with local, national and international conservation groups.

This bill creates an as yet undesignated section of the Florida Statutes.

II. Present Situation:

Lowry Park Zoo is located in Tampa, Florida, and is ranked as one of the top three mid-sized zoos in the United States. It is the best attended not-for-profit attraction in Florida with 766,422 attendees last year and 80 percent local visitation. Approximately half of the zoo's animal inventory of 1600 animals is comprised of Florida native species.

Lowry Park Zoo currently maintains a leadership role in the conservation of Florida's endangered species. The designation by the State of Florida will allow Lowry Park Zoo to

continue to expand its reach nationally and internationally by demonstrating that the work of Lowry Park Zoo on the State's endangered species is recognized as of statewide significance. It will also help to attract additional private funding from individuals, corporations, and foundations regionally and nationally for capital developments, program support, and endowments in support of conservation and education programs conducted in the State of Florida.

With additional funding, Lowry Park Zoo will be able to:

- Continue to provide excellent care for Florida's endangered species;
- Further develop Lowry Park Zoo's conservation and research programs;
- Ensure that the most appropriate and beneficial veterinary technology is in place to care for sick and injured wildlife;
- Attract resources to the State of Florida from a more diverse nationwide group of funders, who will support specific conservation projects;
- Ensure higher visibility for Lowry Park Zoo's conservation education programming to attract broader participation; and
- Develop stronger partnerships and other professional collaboration with local, national, and international conservation organizations.

III. Effect of Proposed Changes:

Section 1. Designates the Lowry Park Zoo, a not-for-profit corporation located in the city of Tampa, as a state center for Florida species conservation and biodiversity. The bill specifies that such recognition shall not be construed as exempting the Lowry Park Zoo from the regulatory purview of the Florida Fish and Wildlife Conservation Commission.

Section 2. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1974

SPONSOR: Education Committee and Senator Wise

SUBJECT: Retirement/Community Colleges

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	Fav/CS
2.	Wilson	Wilson	GO	
3.			AGG	
4.			AP	
5.			RC	
6.				

I. Summary:

The Committee Substitute provides a one-time opportunity for any active community college employee in a regularly established senior management position who has either previously not participated in the Florida Retirement System or who has withdrawn from the Florida Retirement System to transfer to the Florida Retirement System (FRS) Pension Plan defined benefit plan during a window period from July 1, 2004 through September 30, 2004. Conditions and requirements for such a move are identified.

This Committee Substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Florida Retirement System (FRS) profile.—The FRS was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol officers. According to the Department of Management Services, today, the FRS is the fourth largest public retirement system in the United States, covering over 620,000 active employees, over 200,000 annuitants (retirees and their surviving beneficiaries), and about 27,000 participants of the Deferred Retirement Option Program (DROP). As of June 30, 2003, state employees (including university employees) represent less than 23 percent of the FRS membership. Remaining members are employed by local agencies, including all counties (23.3%), district school boards (47.7%), and community colleges (2.8%), as well as cities and special districts (3.5%) that have opted to join the FRS.

The active membership of the FRS is divided into five membership classes: the Regular Class; the Special Risk Class, the Special Risk Administrative Support Class, the Elected Officers' Class, and the Senior Management Service Class. Each class is separately funded based upon the

costs attributable to the members of that class. Membership is compulsory for all full-time and part-time employees working in a regularly established position for any covered agency.

Part VII of chapter 112, F.S.—Article X, Section 14, of the Florida Constitution is implemented by statute under part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to “... prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”

Transfer from the Community College Optional Retirement Program (CCORP) to the Florida Retirement System (FRS) Pension Plan defined benefits plan.—Section 121.051(2)c.3., Florida Statutes, provides that an employee who has elected to participate in the optional retirement program shall have one opportunity, at the employee’s discretion, to choose to transfer from the optional retirement program to the defined benefit program of the Florida Retirement System or to the Public Employee Optional Retirement Program, subject to the terms of the applicable optional retirement program contracts. The transfer is limited to an employee who must be employed in a position not included in the Senior Management Service Class. It would appear that the transfer opportunity currently in law would, therefore, not apply to employees in senior management positions who are the subject of the Committee Substitute.

III. Effect of Proposed Changes:

Section 1. The Committee Substitute allows any active employee in a regularly established senior management position who has not previously participated in the Florida Retirement System or who has withdrawn from the Florida Retirement System to move to the Florida Retirement System defined benefit program. The opportunity to change is available from July 1, 2004 through September 30, 2004 and must be filed with the department and the personnel officer of the community college before October 1, 2004. Alternative dates are provided for employees who are on leave of absence on July 1, 2004. The election to change is irrevocable.

The Committee Substitute provides that an employee electing to change will receive service credit in the Florida Retirement System defined benefit program equal to the years of service in the community college system.

The legislation also provides that an employee must transfer the total accumulated employer contributions and earnings on deposit in his or her alternative retirement plan. If the amount is not sufficient to pay the amount due to the Florida Retirement System defined benefit program, the employee must pay a sum representing the remainder of the amount due.

Section 2. The effective date of the Committee Substitute is July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent an employee does not have sufficient resources to transfer the required funds from his or her alternative retirement plan to the Florida Retirement System defined benefit program, the employee will have to pay a sum representing the remainder of the amount due.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Committee Substitute states that the member must transfer the total amount of his/her contributions and earnings in the alternative retirement account to the FRS account into which he/she is transferring. If the amount in the member's alternative retirement account is more than what is calculated as necessary to complete the transfer, he/she would still have to transfer the entire amount according to the language in this Committee Substitute. According to the Department of Management Services, there is also no language in the Committee Substitute that specifies how the amount owed is to be calculated.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1978

SPONSOR: Senator Argenziano

SUBJECT: Prisoners Convicted in Federal Courts

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	White <i>TW</i>	Wilson <i>W</i>	GO	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

This bill amends s. 944.091, F. S., to authorize the Department of Corrections to contract with the Federal Bureau of Prisons (BOP) for the incarceration of federal prisoners at state correctional facilities. Eligible prisoners must have been convicted of an offense in the federal courts in Florida. The contract must provide for reimbursing Florida in full for all costs or expenses involved, exchange of prisoners under formulas or conditions specified in the contract, or compensation through a combination of both payment and exchange. The department is prohibited from accepting more U.S. prisoners than are transferred to the BOP under the contract. Prisoners transferred into state custody are subject to the same laws and rules as other inmates in Florida correctional institutions, unless the contract specifically provides otherwise or such rules are inconsistent with the sentence imposed by the federal court.

This bill substantially amends the following section of the Florida Statutes: 944.091.

II. Present Situation:

The Department of Corrections and the Federal Bureau of Prisons currently have an exchange arrangement for 30 prisoners based upon 18 U.S.C. 5003(a) and Executive Order 98-188. Inter-Governmental Agreement 589-8 provides for an exchange of up to 30 state prisoners for BOP inmates on a one-for-one basis under the following conditions: (1) the BOP agreed to accept from the State of Florida up to 30 sentenced 'Task Force Inmates,' who were inmates identified as those prosecuted under the Joint Federal and State Homicide Task Force Agreement in 1983 and who were still serving time for convictions under that agreement and (2) Florida agreed to accept into custody up to 30 low security level BOP inmates who have ties to the state.

The application of Inter-Governmental Agreement 589-8 has been the subject of lawsuits filed in state and federal courts by transferred prisoners seeking to be returned to the BOP. The prisoners claim that they should be returned to BOP custody because the Agreement does not comply with s. 944.091, F.S., which provides that the department may board federal prisoners who have less than six months remaining on their federal sentence and have family relationships or job opportunities in Florida. Compensation is to be paid at an agreed rate, which must not be less than the department's average incarceration cost per day.

III. Effect of Proposed Changes:

This bill creates two new subsections of s. 944.091, F.S.

Section 1 of the bill creates s. 944.091(2), F.S., which explicitly provides statutory authority for the exchange of prisoners pursuant to Inter-Governmental Agreement 589-8. This will clarify the statutory basis for the agreement, which was entered into under the authority of Executive Order 98-188 and 18 U.S.C. 5003(a). The department indicates that the bill will eliminate unnecessary and burdensome litigation concerning the agreement and provide a more flexible avenue for prisoner exchange arrangements through direct contracting authority rather than through individual Executive Orders.

Section 944.091(2), F.S., will permit the department to contract with the United States to provide custody, care, subsistence, education, treatment, and training for persons who are convicted of criminal offenses by federal courts located in Florida. Such a contract must either provide for: (1) full reimbursement to Florida for all costs or expenses; (2) exchange of prisoners under formulas or conditions specified in the contract; or (3) compensation through a combination of both payment and exchange. Florida may not accept more prisoners than it transfers under the agreement.

Section 1 of the bill also creates s. 944.091(3), F.S., which provides that persons transferred to the department pursuant to s. 944.091(1) or (2), F.S., are subject to the same laws and rules as prisoners sentenced for violations of Florida law, unless the contract specifies otherwise or the law or rule is inconsistent with the federal sentence.

Section 2 of the bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is anticipated that litigation costs would be saved because the bill will resolve issues that have generated litigation filed by federal prisoners in state custody.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

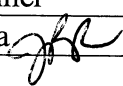

BILL: CS/SB 2498

SPONSOR: Regulated Industries Committee and Senator Garcia

SUBJECT: Condominium Associations

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.	Rhea 	Wilson 	GO	
3.			JU	
4.			AGG	
5.			AP	
6.				

I. Summary:

The bill provides that unless expressly stated in an amendment to the declaration of condominium, any provision restricting unit owner's rights relating to the rental of units, keeping of pets, or allocation of parking spaces shall apply only to unit owners who purchase their unit after the effective date of that amendment. An amendment that expressly deprives current unit owners of any part of these rights must be approved by at least a majority of the voting interests. A declaration or an amendment to a declaration may require approval by a greater than super majority vote.

The bill creates an Office of the Condominium Ombudsman housed in the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) but independent of the division. The bill also creates a seven member Advisory Council whose duties are to receive input from the public regarding condominium issues, to review, evaluate and advise the division concerning revisions and adoption of rules, and to recommend improvements, if needed, to education programs offered by the division.

The bill provides that in addition to the prospectus or offering circular, the developer or current owner must also furnish the "Frequently Asked Questions and Answers" document to any prospective buyer. The bill amends the notice provision in the "Frequently Asked Questions and Answers" document concerning court cases in which the association may face liability of \$25,000 or more.

This bill substantially amends sections 718.110 and 718.504, Florida Statutes.

The bill creates the following sections of the Florida Statutes: 718.5011, 718.5012, 718.5013, 718.5014, and 718.5015.

II. Present Situation:

Executive Branch Structure - Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03(7), F.S., defines the term “council” or “advisory council” to mean:

... an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.052, F.S., proves that advisory bodies, commission, boards of trustees and other collegial bodies created by statutory enactment must be established, evaluated, or maintained in accordance with specific standards:

- ▶ It may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.
- ▶ It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose.
- ▶ The Legislature and the public must be kept informed of the numbers, purposes, membership, activities, and expenses of these entities.
- ▶ A collegial body may not be created or reestablished unless:
 - It meets a statutorily defined purpose.
 - Its powers and responsibilities conform to the definitions for governmental units in s. 20.03, F.S.
 - Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and
 - Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

Additionally, s. 20.052, F.S., requires the private citizen members of an advisory body that is adjunct to an executive agency to be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.

All meetings and records of such an entity are public under the requirements of s. 286.011, F.S., and ch. 119, F.S.

Under the section, upon termination, all records of the collegial body are to be appropriately stored by the executive agency to which it was adjunct, and any property assigned to it must be reclaimed by that agency. The collegial body is not authorized to perform any activities after the effective date of its abolition.

Condominiums - A condominium is the form of ownership of real property created under ch. 718, F.S., “which is comprised entirely of units that may be owned by one or more persons,

and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium association may be a corporation for profit or a corporation not for profit.² The board of administration of a condominium is the board of directors or other representative body which is responsible for the administration of the association.³

Creation of condominiums; contents of declaration

Every condominium created in this state shall be created pursuant to ch. 718, F.S.⁴ A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. Declarations must contain or provide for certain matters including a provision for unit owners’ membership and voting rights in the association.⁵

Amendment of declaration; correction of error or omission in declaration by circuit court

Associations are free to amend their declarations following the amendatory provisions contained in the declaration and statute.⁶

Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.

Part of the powers and duties of the Division of Land Sales includes the requirement to provide training programs for board members and unit owners.⁷

Prospectus or offering circular; “Frequently Asked Questions and Answers”

A question and answer sheet is required to be updated and maintained by the association, but it is only required to be given by the developer to first time purchasers from the developer. Resale purchasers are not entitled to receive the question and answer sheet. The question and answer sheet must disclose all litigation in which the association is subject to liability of \$100,000 or more.⁸

III. Effect of Proposed Changes:

Section 1. Amendment of declaration; correction of error or omission in declaration by circuit court; grandfathering and modification of certain rights. The bill amends s. 718.110, F.S., to add provisions relating to grandfathering and modification of certain rights. The bill provides that amendments to the declaration relating to pets, the rental of units, and the allocation of parking spaces may only be applied to owners purchasing after the effective date of the amendment unless expressly stated in the amendment.

¹ Section 718.103(11), F.S.

² Sections 718.104(4)(i) and 718.111(1)(a), F.S.

³ Section 718.103(4), F.S.

⁴ Section 718.104, F.S.

⁵ Section 718.104(4)(j), F.S.

⁶ Section 718.110, F.S.

⁷ Section 71.501, F.S.

⁸ Section 718.504, F.S.

Unless otherwise provided by law, or by the declaration or bylaws, if an amendment deprives an owner of the right to have pets or offer their units for rent, the amendment must be approved by at least a majority of the voting interest. A declaration or an amendment to a declaration may require approval by a greater than super majority vote.

Section 2. Ombudsman; appointment; oath; restrictions on ombudsman and his or her employees. The bill creates an Office of the Condominium Ombudsman. The office is, for administrative purposes, within the division but shall remain independent of the division. The office shall be a separate budget entity, funded by the division and the ombudsman shall be the agency head. The department shall provide administrative support and service to ombudsman, but the ombudsman is not subject to the control, supervision, or direction of the department. The ombudsman shall develop a budget under ch. 216, F.S. which the department must submit, without change to the Governor along with the budget of the department.

The ombudsman is appointed by the governor and must be an attorney admitted to practice in Florida and must serve at the pleasure of the Governor. Vacancies are filled in the same manner as the original appointment. The ombudsman and attorneys serving as staff must take and subscribe to the oath of office required of state officers by the State Constitution.

An officer or full-time employee of the ombudsman's office may not:

- actively engage in any other business or profession;
- serve as the representative of any political party or on the executive committee or other governing body of any political party, committee, organization, or association;
- receive remuneration for activities on behalf of any candidate for public office; or
- engage in the solicitation of votes or other activities on behalf of any candidate for public office.

The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

Section 3. Ombudsman; powers and duties. The ombudsman has powers as are necessary to carry out the duties of his or her office including, but not limited to the following specific powers:

- have access to and use of all files and records of the division and of all condominium associations, by subpoena if necessary;
- employ professional and clerical staff as necessary for the efficient operation of the Office of the Condominium Ombudsman, including experts and other technical personnel for participation in contested proceedings before the division when the best interest of the public will be served, and with the approval of the Office of the Governor to adopt and administer a uniform personnel job classification and pay plan for such employees, and to enter into contracts;
- prepare and issue reports, recommendations, and proposed orders to the division, the Governor, the Advisory Council on Condominiums, the President of the

Senate, the Speaker of the House of Representatives, and the minority leader of the Senate and the House of Representatives on any matter or subject within the jurisdiction of the division and to make recommendations as he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel and functions;

- act as liaison between the division and unit owners, and to assist any unit owner in the preparation and filing of a complaint to be investigated by the division;
- recommend that the division initiate enforcement proceedings;
- submit findings of a criminal nature to the state attorney and assist that office in bringing charges;
- monitor, investigate, and review condominium elections and meetings, which includes, but is not limited to:
 - Providing information and evidence to the division if a member of a condominium board attempts, engages in, conspires to engage in, or willfully and knowingly benefits from electoral fraud. If the information and evidence is clear and convincing, the division must order the member removed from the board. The order must also prohibit the person who is removed from running for election to any office of a condominium board in the state for four years. Any person who is removed twice is barred from serving on a condominium board in the state. Factual findings forming the basis for an order shall be subject to judicial review only for abuse of discretion;
 - Working with the division to adopt rules governing proceedings to remove a board member for electoral fraud. The rules must, at minimum, provide the accused board member with adequate notice, opportunity to be heard, the right to confront and cross-examine witnesses, the right to submit rebuttal evidence, and the right to counsel. Before the division develops a rule proposal on removal, the division and the office shall meet and confer regarding issues to be addressed in the rule. After the division develops a rule proposal on removal, and before the proposal is finalized for publication or other presentation to the public, the division shall provide the office with a reasonable opportunity to review and provide written comments on the proposal and consider any comments the ombudsman provides.
- make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations and managers.

Section 4. Ombudsman; location. The ombudsman shall maintain his or her principal office in Leon County on the premises of the division or, if suitable space cannot be provided there, at such other place convenient to the office of the division as will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices upon the concurrence of the Joint Legislative Auditing Committee.

Section 5. Advisory council; membership functions. The bill creates a seven member Advisory Council on Condominiums. The council shall consist of:

- two members appointed by the President of the Senate;
- two members appointed by the Speaker of the House of Representatives; and
- three members appointed by the Governor.

At least one member appointed by the Governor shall represent timeshare condominiums. Members are appointed to 2-year terms. However, one of the persons initially appointed by the Governor, by the President of the Senate, and by the Speaker of the House of Representatives, shall be appointed to a 1-year term. The director of the division shall serve as an ex officio nonvoting member. It is the intention of the Legislature that the persons appointed represent a cross section of person interested in condominium issues. The council shall be located within the division for administrative purposes. Members of the council shall serve without compensation, but are entitled to receive per diem and travel expenses while on official business.

The functions of the advisory council shall be to:

- receive, from the public, input regarding issues of concern with respect condominiums and recommendations for changes in the condominium law. The issues that the council shall consider include, but are limited to, the rights and responsibilities of the unit owners in relation to rights and responsibilities of the association;
- review, evaluate, and advise the division concerning revisions and adoption of rules affecting condominiums;
- recommend improvements if need, in the education programs offered by the division.

The council may elect a chair and vice chair and such other officers as it may deem advisable. The council shall meet at the call of its chair, at the request of a majority of its membership, at the request of the division, or at such times as it may prescribe. A majority of the members of the council shall constitute a quorum. Council action may be taken by vote of a majority of the voting members who are present at a meeting where there is a quorum.

Section 6. Prospectus or offering circular; “Frequently Asked Questions and Answers”.

The bill amends s. 718.504, F.S., to provide that in addition to the prospectus or offering circular, the developer or current owner must also furnish the “Frequently Asked Questions and Answers” document to any prospective buyer. The bill amends the notice provision in the “Frequently Asked Questions and Answers” document concerning court cases in which the association may face liability of \$25,000 or more.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers.⁹ The bill creates a council, as provided in s. 20.03, F.S. (see, *infra*). While the definition of a “council” does not specifically require it to be created within or adjunct to an executive branch entity, a council is still within the executive branch. As such, the Governor is authorized to appoint all executive branch officers and the Legislature is authorized to provide for Senate confirmation under Article IV, s. 6 of the State Constitution.¹⁰ The bill provides for legislative officers, as well as the Governor, to appoint members to the advisory council.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, the bill will have the following fiscal impacts:

- The Florida Division of Land Sales, Condominiums, and Mobile Homes’ Trust Fund would be required to provide support for the Advisory Council on Condominiums and the Office of the Ombudsman. Both the Council and Ombudsman would require additional positions and expenditures.
- The Advisory Council on Condominiums will require additional expenditures for travel and per diem. Quarterly meetings of the Council and travel for seven Council members and the division director could cost approximately \$18,720. The division would also require an additional Administrative Assistant II, pay grade 18, to provide staffing for the Council.

⁹ *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

¹⁰ While the ultimate choice of an appointee to an executive branch office resides with the Governor, the Legislature has established processes which limit the choices that are available to the Governor for appointment to a statutory office. For example, the Governor is required to select the head of the Department of Transportation from a list of three nominees forwarded to him by the Florida Transportation Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the definition of a “council” does not specifically require it to be created within or adjunct to an executive branch entity, collegial bodies are typically created adjunct to a specific department. This ensures proper oversight and administrative support. Further, under s. 20.052, F.S., the entity that the council is created adjunct to receives all public records of the council upon its termination.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

Bill No. CS for SB 2498

Amendment No. _____



461096

#1

Senate

CHAMBER ACTION

House**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

DATE:

4-16-04

TIME:

1:00 P.M.

Senator Constantine moved the following amendment:

Senate Amendment

On page 9, line 1, through
page 11, line 15, delete those lines

and insert: rental of units or keeping of pets, shall apply
only to unit owners who purchase their unit after the
effective date of that amendment.

(b) Notwithstanding any other provision of law, or of
the declaration or bylaws, an amendment that expressly
deprives current unit owners of any part of their rights
specified in paragraph (a) must be approved by at least a
majority of the voting interests. A declaration or an
amendment to a declaration may require approval by a greater
than super majority vote.

Section 2. Section 718.5011, Florida Statutes, is
created to read:

718.5011 Ombudsman; appointment; oath; restrictions on
ombudsman and his or her employees.--

(1) There is created an Office of the Condominium

Bill No. CS for SB 2498

Amendment No. _____



461096

1 Ombudsman. The office is, for administrative purposes, within
2 the Division of Florida Land Sales, Condominiums, and Mobile
3 Homes but shall remain independent of the division. The office
4 shall be a separate budget entity, funded by the Division of
5 Florida Land Sales, Condominiums, and Mobile Homes Trust Fund,
6 and the ombudsman shall be the agency head for all purposes.
7 The Department of Business and Professional Regulation shall
8 provide administrative support and service to the ombudsman,
9 but the ombudsman shall not be subject to the control,
10 supervision, or direction of the department. The ombudsman
11 shall develop a budget pursuant to chapter 216 which the
12 department shall submit, without change, to the Governor along
13 with the budget of the department.

14 (2) The Governor shall appoint the ombudsman. The
15 ombudsman must be an attorney admitted to practice before the
16 Florida Supreme Court and shall serve at the pleasure of the
17 Governor. Vacancies in the office shall be filled in the same
18 manner as the original appointment. The ombudsman and
19 attorneys serving as staff shall take and subscribe to the
20 oath of office required of state officers by the State
21 Constitution. An officer or full-time employee of the
22 ombudsman's office may not actively engage in any other
23 business or profession; serve as the representative of any
24 political party or on the executive committee or other
25 governing body of any political party; serve as an executive,
26 officer, or employee of any political party, committee,
27 organization, or association; receive remuneration for
28 activities on behalf of any candidate for public office; or
29 engage in the solicitation of votes or other activities on
30 behalf of any candidate for public office. The ombudsman or
31 any employee of his or her office may not become a candidate

Bill No. CS for SB 2498

Amendment No. _____



461096

1 for election to public office unless he or she first resigns
2 from his or her office or employment.

3 Section 3. Section 718.5012, Florida Statutes, is
4 created to read:

5 718.5012 Ombudsman; powers and duties.--The ombudsman
6 shall have such powers as are necessary to carry out the
7 duties of his or her office, including, but not limited to,
8 the following specific powers:

9 (1) To have access to and use of all files and records
10 of the division and of all condominium associations, by
11 subpoena if necessary.

12 (2) To employ professional and clerical staff as
13 necessary for the efficient operation of the Office of the
14 Condominium Ombudsman, including experts and other technical
15 personnel for participation in contested proceedings before
16 the division when the best interests of the public will be
17 served, and with the approval of the Office of the Governor,
18 to adopt and administer a uniform personnel job classification
19 and pay plan for such employees, and to enter into contracts.

20 (3) To prepare and issue reports, recommendations, and
21 proposed orders to the division, the Governor, the Advisory
22 Council on Condominiums, the President of the Senate, the
23 Speaker of the House of Representatives, and the minority
24 leaders of the Senate and the House of Representatives on any
25 matter or subject within the jurisdiction of the division, and
26 to make such recommendations as he or she deems appropriate
27 for legislation relative to division procedures, rules,
28 jurisdiction, personnel, and functions.

29 (4) To act as liaison between the division and unit
30 owners, and to assist any unit owner by providing information
31 and explaining how to file a complaint to be investigated by

Bill No. CS for SB 2498

Amendment No. _____



461096

1 the division. The

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#2

Bill No. CS for SB 2498

Amendment No. _____



450264

CHAMBER ACTION

SenateHouse**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**DATE: 4-14-04
TIME: 3:35 P.m.

Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

On page 13, lines 10 - 12, delete those lines

and insert: carry out the duties and functions of his or her
office.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, lines 11 - 26, delete those lines

and insert:

Homes; providing that the ombudsman is the
agency head for all purposes; providing that
the office is independent and may be funded by
the Division of Florida Land Sales,
Condominiums, and Mobile Homes Trust Fund;
providing for submittal of proposed budget to
the Governor; providing for administrative

Bill No. CS for SB 2498Amendment No. 

450264

1 support by the Department of Business and
2 Professional Regulation; authorizing
3 appointment of ombudsman by the Governor;
4 prohibiting ombudsman or staff from engaging in
5 certain acts; creating s. 718.5012. F.S.;
6 granting certain powers and duties to the
7 ombudsman; authorizing the Office of the
8 Governor to approve a personnel classification
9 and pay plan for the office of the ombudsman
10 and entry of contracts by that office;
11 providing for the division to remove a member
12 of a condominium board under certain
13 conditions; authorizing the division to adopt
14 rules with respect to such removal; providing
15 that the ombudsman is not required to provide
16 assistance at public expense; creating s.
17 718.5014, F.S.; providing for location of the
18 office of the ombudsman; creating s.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2938

SPONSOR: Senator Saunders

SUBJECT: Southwest Florida Transportation

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	Fav/2 amendments
2.	Wilson <i>W</i>	Wilson <i>W</i>	GO	
3.			FT	
4.			ATD	
5.			AP	
6.				

I. Summary:

This bill creates the Southwest Florida Expressway Authority (the Authority) in a new Part X of Chapter 348, F.S. The Authority will have the general powers and duties of all expressway authorities, such as the ability to enter into contracts, acquire land, set tolls, and hire staff. Bonds for the Authority's projects could either be issued on its behalf by the state Division of Bond Finance or by the Authority itself. Provisions unique to this Authority include:

- An eight-member governing board comprised of: one permanent resident each from Collier and Lee counties, appointed by the Governor; one permanent resident of Collier County appointed by the Collier County Commission; one permanent resident of Lee County appointed by the Lee County Commission; one member each from the Collier and Lee county commissions; the executive director of the Southwest Florida Regional Planning Council; and the secretary of the Florida Department of Transportation (FDOT) district that includes Collier and Lee counties. The FDOT district secretary is a non-voting member.
- Projects are limited to tolled expressway lanes on Interstate 75 and support facilities in Collier and Lee counties, unless the two county commissions support projects elsewhere. Although not stated in the bill, the Authority also must obtain federal and state approval before building tolled lanes on I-75.
- The Authority is permitted to enter into a lease-purchase agreement with the FDOT, whereby the FDOT would operate and maintain the tolled facilities and at some point would own the system and make it part of the state road system.
- The act creating the Authority shall "sunset" in 12 years after its effective date if the Authority has no outstanding indebtedness, no studies or project designs underway, or no projects under construction, and if it is not operating or maintaining the system.

- The Authority will receive \$2.5 million from FDOT's Toll Facilities Revolving Loan Trust Fund to help fund its start-up costs.

This bill creates the following sections of the Florida Statutes: Part X, Chapter 348, consisting of ss. 338.993, 348.9931, 348.9932, 348.9933, 348.9934, 348.9935, 348.9936, 348.9937, 348.9938, 348.9939, 348.994, 348.9941, 348.9942, 348.9943, 348.9944, 348.9945, and 348.9946.

II. Present Situation:

Collier and Lee counties remain two of the fastest-growing counties in Florida, replete with significant traffic congestion. FDOT District 1 recently completed a preliminary design and engineering (PD&E) study on the I-75 corridor in Collier and Lee counties that examined potential capacity enhancement alternatives. The study recommended the addition of two lanes on the interstate from State Road 951 in Collier County north to State Road 78 in Lee County, plus other interchange improvements. Based on the FDOT's adopted FY 03-04 to FY 07-08 Work Program:

- In the Lee County section of the project, right-of-way acquisition will begin in 2006 at an estimated cost of \$46 million; environmental permitting is scheduled for 2007 at a cost of \$361,000; and construction is scheduled to begin in 2008 at an estimated cost of \$96 million.
- In the Collier County section of the project, right-of-way acquisition is scheduled to begin in 2007, at an estimated cost of \$23 million.

FDOT District 1 indicates the project could cost \$200 million.

The PD&E study also considered an alternative to the widening of this section of I-75 to eight lanes. Six of the lanes would be for general use lanes and two would be special purpose lanes that also could serve as an envelope for passenger rail service based on future decisions. FDOT's Long-Range Transportation Plan indicates the need to expand I-75 to 10 lanes by 2030. The Florida Turnpike Enterprise also is studying the feasibility of adding tolled lanes to I-4 and I-75 in the future.

Chapter 348, F.S., creates eight expressway or bridge authorities. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include local government officials who decide on projects and expenditure of funds.

III. Effect of Proposed Changes:

Senate Bill 2938 creates a new Part X, Chapter 348, F.S., relating to the "Southwest Florida Expressway Authority" (the Authority), and would join nine other expressway authorities created pursuant to state law. Much of the language is "boiler plate" common to all of the other expressway authorities – the entity is governed by a board of directors and has the ability to enter into contracts and agreements; acquire land and other property; to engage in eminent domain proceedings pursuant to chapters 74 and 75, F.S.; to sue and be sued; borrow funds; set and

collect tolls, fees, or charges; plan projects; have certain responsibilities to bondholders; and hire staff. Bonds for the Authority's projects could either be issued on its behalf by the state Division of Bond Finance or by the Authority itself, a power only the Orlando-Orange County Expressway Authority currently has. As with each of the existing expressway authorities, this new authority will have additional requirements or provisions. They include:

- Projects are limited to tolled expressway lanes and support facilities on I-75 within Collier and Lee counties, unless the two county commission support projects elsewhere within their boundaries. The Authority is specifically precluded from participating in future development along State Road 951, a request made by local officials concerned about impacts to environmentally sensitive lands in that corridor.
- The Authority plans to enter into a lease-purchase agreement with the FDOT, which would act as the construction agent for projects, would operate and maintain the tolled facilities, and eventually be deeded the tolled facilities.
- The act creating the Authority shall "sunset" in 12 years after its effective date if the Authority has no outstanding indebtedness, no studies or project designs underway, or no projects under construction, and if it is not operating or maintaining the system. This is to ensure a dormant Authority does not continue to exist in law, and provides some impetus for the Authority, if created, to expedite its goals.
- The Authority will receive \$2.5 million from the FDOT's Toll Facilities Revolving Loan Trust Fund to help fund its start-up and administrative costs.

The Authority is specifically prohibited from pledging any revenues of the state, or of Collier and Lee counties, or municipalities within those counties, and its fiscal obligations are not the responsibility of the state or other political subdivisions.

An eight-member governing board shall manage the Authority's operations. The membership shall consist of seven voting members and one non-voting member, the FDOT District 1 secretary. The makeup of the seven voting members is:

- One permanent resident each from Collier and Lee counties, appointed by the Governor to four-year terms. The Governor shall select his appointees from separate lists of five names developed by each County Commission. No elected official, or any person who is an employee of Lee or Collier County, or of any municipality within those two counties may be appointed.
- One permanent resident of Collier County appointed by the Collier County Commission and one permanent resident of Lee County appointed by the Lee County Commission. Each shall serve a four-year term. As with the governor appointees, none of these appointees shall be an elected official, or any person who is an employee of Lee or Collier County, or of any municipality within those two counties.
- One member each from the Collier and Lee county commissions for two-year terms.
- The executive director of the Southwest Florida Regional Planning Council.

Each member of the governing board shall be eligible for reappointment. The members shall elect from their number a chairperson; they also may select a treasurer and a secretary who are not required to be authority members. Four members constitute a quorum, and a majority of

members must be present for the authority to take action. Authority members are entitled to receive per diem and other expenses incurred in connection with Authority business, pursuant to s. 112.061, F.S.

Section 1: Creates Part X of chapter 348, F.S. specifically ss. 348.993-348.9946, F.S.

Section 348.993, F.S., names the “Southwest Florida Expressway Authority.”

Section 348.9931, F.S., defines terms used in this part.

Section 348.9932, F.S., specifies membership on expressway authority board of directors, describes their terms and duties, and allows hiring of staff.

Section 348.9933, F.S., specifies powers of the governing board, specifically limiting the scope of the authority’s mission to tolled expressway lanes on I-75 within Collier and Lee counties.

Section 348.9934, F.S., authorizes the board to procure commodities and services.

Section 348.9935, F.S., specifies bond financing pursuant to s. 11(f), Art. VII of the State Constitution.

Section 348.9936, F.S., specifies bonds may be issued by the State Division of Bond Finance on behalf of the expressway authority or by the authority itself and specifies process and conditions for issuing bonds.

Section 348.9937, F.S., provides remedies for bond holders.

Section 348.9938, F.S., allows the authority to enter into a lease-purchase agreement with the FDOT for any transportation facilities built by the authority.

Section 348.9939, F.S., allows authority to appoint the FDOT as its agent for purposes of constructing aforementioned facilities.

Section 348.994, F.S., allows the authority to acquire land and property and provides the right of eminent domain.

Section 348.9941, F.S., provides the authority the ability to enter contracts with other governmental bodies.

Section 348.9942, F.S., specifies the covenant of the state against altering the right vested in the authority until all bonds are paid and discharged.

Section 348.9943, F.S., exempts the authority from certain taxation.

Section 348.9944, F.S., provides eligibility for investments and securities.

Section 348.9945, F.S., expresses the intention of pledges made by the department are enforceable in court.

Section 348.9946, F.S., specifies no approval from voters shall be necessary before bonds can be issued.

Section 2: Specifies the expressway authority shall sunset 12 years after this act takes effect if the authority has no outstanding debt, no studies or project design underway, and no projects under construction, nor is operating or maintaining any part of the system it was established to create.

Section 3: Specifies notwithstanding the provisions of s. 338.251, F.S., the authority is appropriated \$2.5 million from the Toll Facilities Revolving Loan Trust Fund for fiscal year 2004-2005, and that it can spend all or a portion of the money on administrative or startup costs.

Section 4: Specifies this act shall take effect upon passage of resolutions by the Lee and Collier County commissions in support of this act no sooner than July 1, 2004, in the event the county commissions pass such resolutions before that date. Otherwise, this section shall take effect upon the bill becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional lanes on I-75 constructed by the Southwest Florida Expressway Authority will be toll facilities, requiring an indeterminate toll to be paid by motorists electing to drive on those lanes.

C. Government Sector Impact:

The bill provides for a \$2.5 million appropriation from the State Toll Facilities Revolving Loan Trust Fund in FY 04-05.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Transportation:

The amendment requires the authority board to be expanded to include representatives of Charlotte County in the event an expansion of the project is warranted and desirable by the County Commissions of Collier, Lee, and Charlotte Counties.

#2 by Transportation:

The amendment clarifies the \$2.5 million appropriation from the Toll Facilities Revolving Loan Trust Fund is a loan. Further, the amendment removes the hiring of staff and consultants from the eligible administrative and startup costs for which the loan may be used.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2938Amendment No. 1

121302

CHAMBER ACTION

SenateHouse.
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The Committee on Transportation recommended the following amendment:

Senate Amendment (with title amendment)

On page 7, line 1, delete that line

and insert:

(4) If an expansion of the project into Charlotte County is warranted and desirable as indicated by the adoption of resolutions in support of the expansion by the authority and by each Board of County Commissioners of Charlotte, Collier, and Lee Counties, the membership of the authority shall be expanded as set forth in this subsection. The authority shall have nine voting members and two nonvoting members. The executive director of the Southwest Florida Regional Planning Council will shift from a voting member to a nonvoting member. Three members from Charlotte County shall be added to the authority and each shall be a voting member. The Charlotte County members shall be selected in the same manner as provided for the appointment of the members from Collier and Lee Counties.

Bill No. SB 2938Amendment No. 1

121302

1 (5)(a) The authority may employ an executive director,

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4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 On page 1, line 14, after the first semicolon,

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8 and insert:

9 authorizing the expansion of the project into
10 Charlotte County;

Bill No. SB 2938

Amendment No. 2



023106

CHAMBER ACTION

Senate

House

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The Committee on Transportation recommended the following amendment:

Senate Amendment (with title amendment)

On page 28, lines 4 through 13, delete those lines

and insert:

Section 3. Notwithstanding the provisions of section 338.251, Florida Statutes, the Department of Transportation is authorized to loan the Southwest Florida Expressway Authority in fiscal year 2004-2005 the sum of \$2.5 million to initially fund the Southwest Florida Transportation System.

Notwithstanding the provisions of section 338.251, Florida Statutes, all or a portion of this loan may be used for administrative and other startup costs of the Southwest Florida Expressway Authority and the system.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 2, line 5, delete that line

Bill No. SB 2938Amendment No. 2

023106

1 and insert:

2 the act; providing for a loan;

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: PCS/SB 2938

SPONSOR: Governmental Oversight and Productivity Committee and Senator Saunders

SUBJECT: Southwest Florida Transportation Authority

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	Fav/2 amendments
2.	Wilson <i>W</i>	Wilson <i>W</i>	GO	
3.			FT	
4.			ATD	
5.			AP	
6.				

I. Summary:

This bill creates the Southwest Florida Expressway Authority (the authority) in a new Part X of Chapter 348, F.S. The authority will have the general powers and duties of all expressway authorities, such as the ability to enter into contracts, acquire land, set tolls, and hire staff. Bonds for the authority's projects could either be issued on its behalf by the state Division of Bond Finance or by the authority itself. Provisions unique to this authority include:

- An eight-member governing board comprised of: one permanent resident each from Collier and Lee counties, appointed by the Governor; one permanent resident of Collier County appointed by the Collier County Commission; one permanent resident of Lee County appointed by the Lee County Commission; one member each from the Collier and Lee county commissions; the executive director of the Southwest Florida Regional Planning Council; and the secretary of the Florida Department of Transportation (FDOT) district that includes Collier and Lee counties. The FDOT district secretary is a non-voting member.
- Projects are limited to tolled expressway lanes on Interstate 75 and support facilities in Collier and Lee counties, unless the two county commissions support projects elsewhere. Although not stated in the bill, the authority also must obtain federal and state approval before building tolled lanes on I-75.
- The authority is permitted to enter into a lease-purchase agreement with the FDOT, whereby the FDOT would operate and maintain the tolled facilities and at some point would own the system and make it part of the state road system.
- The act creating the authority shall "sunset" in 12 years after its effective date if the Authority has no outstanding indebtedness, no studies or project designs underway, or no projects under construction, and if it is not operating or maintaining the system.

- The authority will receive \$2.5 million from FDOT's Toll Facilities Revolving Loan Trust Fund to help fund its start-up costs.

This bill creates the following sections of the Florida Statutes: Part X, Chapter 348, consisting of ss. 338.993, 348.9931, 348.9932, 348.9933, 348.9934, 348.9935, 348.9936, 348.9937, 348.9938, 348.9939, 348.994, 348.9941, 348.9942, 348.9943, 348.9944, 348.9945, and 348.9946.

II. Present Situation:

Collier and Lee counties remain two of the fastest-growing counties in Florida, replete with significant traffic congestion. FDOT District 1 recently completed a preliminary design and engineering (PD&E) study on the I-75 corridor in Collier and Lee counties that examined potential capacity enhancement alternatives. The study recommended the addition of two lanes on the interstate from State Road 951 in Collier County north to State Road 78 in Lee County, plus other interchange improvements. Based on the FDOT's adopted FY 03-04 to FY 07-08 Work Program:

- In the Lee County section of the project, right-of-way acquisition will begin in 2006 at an estimated cost of \$46 million; environmental permitting is scheduled for 2007 at a cost of \$361,000; and construction is scheduled to begin in 2008 at an estimated cost of \$96 million.
- In the Collier County section of the project, right-of-way acquisition is scheduled to begin in 2007, at an estimated cost of \$23 million.

FDOT District 1 indicates the project could cost \$200 million.

The PD&E study also considered an alternative to the widening of this section of I-75 to eight lanes. Six of the lanes would be for general use lanes and two would be special purpose lanes that also could serve as an envelope for passenger rail service based on future decisions. FDOT's Long-Range Transportation Plan indicates the need to expand I-75 to 10 lanes by 2030. The Florida Turnpike Enterprise also is studying the feasibility of adding tolled lanes to I-4 and I-75 in the future.

Chapter 348, F.S., creates eight expressway or bridge authorities. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include local government officials who decide on projects and expenditure of funds.

III. Effect of Proposed Changes:

Senate Bill 2938 creates a new Part X, Chapter 348, F.S., relating to the "Southwest Florida Expressway Authority" (the authority), and would join nine other expressway authorities created pursuant to state law. Much of the language is "boiler plate" common to all of the other expressway authorities – the entity is governed by a board of directors and has the ability to enter into contracts and agreements; acquire land and other property; to engage in eminent domain proceedings pursuant to chapters 74 and 75, F.S.; to sue and be sued; borrow funds; set and

collect tolls, fees, or charges; plan projects; have certain responsibilities to bondholders; and hire staff. Bonds for the Authority's projects could either be issued on its behalf by the state Division of Bond Finance or by the Authority itself, a power only the Orlando-Orange County Expressway Authority currently has. As with each of the existing expressway authorities, this new authority will have additional requirements or provisions. They include:

- Projects are limited to tolled expressway lanes and support facilities on I-75 within Collier and Lee and Charlotte counties, the latter if subsequently approved by resolutions of the three county commissions, unless the three county commissions support projects elsewhere within their boundaries. The authority is specifically precluded from participating in future development along State Road 951, a request made by local officials concerned about impacts to environmentally sensitive lands in that corridor.
- The authority plans to enter into a lease-purchase agreement with the FDOT, which would act as the construction agent for projects, would operate and maintain the tolled facilities, and eventually be deeded the tolled facilities.
- The act creating the authority shall "sunset" in 12 years after its effective date if the Authority has no outstanding indebtedness, no studies or project designs underway, or no projects under construction, and if it is not operating or maintaining the system. This is to ensure a dormant Authority does not continue to exist in law, and provides some impetus for the authority, if created, to expedite its goals.

The authority is specifically prohibited from pledging any revenues of the state, or of Collier and Lee counties, or municipalities within those counties, and its fiscal obligations are not the responsibility of the state or other political subdivisions.

An eight-member governing board shall manage the authority's operations. The membership shall consist of seven voting members and one non-voting member, the FDOT District 1 secretary. The makeup of the seven voting members is:

- One permanent resident each from Collier and Lee counties, appointed by the Governor to four-year terms. The Governor shall select his appointees from separate lists of five names developed by each County Commission. No elected official, or any person who is an employee of Lee or Collier County, or of any municipality within those two counties may be appointed.
- One permanent resident of Collier County appointed by the Collier County Commission and one permanent resident of Lee County appointed by the Lee County Commission. Each shall serve a four-year term. As with the governor appointees, none of these appointees shall be an elected official, or any person who is an employee of Lee or Collier County, or of any municipality within those two counties.
- One member each from the Collier and Lee county commissions for two-year terms.
- The executive director of the Southwest Florida Regional Planning Council.

Each member of the governing board shall be eligible for reappointment. The members shall elect from their number a chairperson; they also may select a treasurer and a secretary who are not required to be authority members. Four members constitute a quorum, and a majority of members must be present for the authority to take action. Authority members are entitled to

receive per diem and other expenses incurred in connection with Authority business, pursuant to s. 112.061, F.S.

Section 1: Creates Part X of chapter 348, F.S. specifically ss. 348.993-348.9946, F.S.

Section 348.993, F.S., names the “Southwest Florida Expressway Authority.”

Section 348.9931, F.S., defines terms used in this part.

Section 348.9932, F.S., specifies membership on expressway authority board of directors, describes their terms and duties, and allows hiring of staff.

Section 348.9933, F.S., specifies powers of the governing board, specifically limiting the scope of the authority’s mission to tolled expressway lanes on I-75 within Collier and Lee counties.

Section 348.9934, F.S., authorizes the board to procure commodities and services.

Section 348.9935, F.S., specifies bond financing pursuant to s. 11(f), Art. VII of the State Constitution.

Section 348.9936, F.S., specifies bonds may be issued by the State Division of Bond Finance on behalf of the expressway authority or by the authority itself and specifies process and conditions for issuing bonds.

Section 348.9937, F.S., provides remedies for bond holders.

Section 348.9938, F.S., allows the authority to enter into a lease-purchase agreement with the FDOT for any transportation facilities built by the authority.

Section 348.9939, F.S., allows authority to appoint the FDOT as its agent for purposes of constructing aforementioned facilities.

Section 348.994, F.S., allows the authority to acquire land and property and provides the right of eminent domain.

Section 348.9941, F.S., provides the authority the ability to enter contracts with other governmental bodies.

Section 348.9942, F.S., specifies the covenant of the state against altering the right vested in the authority until all bonds are paid and discharged.

Section 348.9943, F.S., exempts the authority from certain taxation.

Section 348.9944, F.S., provides eligibility for investments and securities.

Section 348.9945, F.S., expresses the intention of pledges made by the department are enforceable in court.

Section 348.9946, F.S., specifies no approval from voters shall be necessary before bonds can be issued.

Section 2: Specifies the expressway authority shall sunset 12 years after this act takes effect if the authority has no outstanding debt, no studies or project design underway, and no projects under construction, nor is operating or maintaining any part of the system it was established to create.

Section 3: Specifies this act shall take effect upon passage of resolutions by the Lee and Collier County commissions in support of this act no sooner than July 1, 2004, in the event the county commissions pass such resolutions before that date. Otherwise, this section shall take effect upon the bill becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional lanes on I-75 constructed by the Southwest Florida Expressway Authority will be toll facilities, requiring an indeterminate toll to be paid by motorists electing to drive on those lanes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

DATE:

4-16-07

TIME:

10:45 A.M.

Dr. Orsini

A bill to be entitled

An act relating to Southwest Florida transportation; creating pt. X of ch. 348, F.S., consisting of ss. 348.993, 348.9931, 348.9932, 348.9933, 348.9934, 348.9935, 348.9936, 348.9937, 348.9938, 348.9939, 348.994, 348.9941, 348.9942, 348.9943, 348.9944, 348.9945, and 348.9946, F.S., titled "Southwest Florida Expressway Authority"; providing a popular name; providing definitions; creating the Southwest Florida Expressway Authority encompassing Collier and Lee Counties; providing for a governing body of the authority; providing for membership; establishing a process for Charlotte County to participate in the authority; providing purposes and powers; providing for the Southwest Florida Transportation System; providing for procurement; providing bond financing authority for improvements; providing for bonds of the authority; providing for fiscal agents; providing the State Board of Administration may act as fiscal agent; providing for certain financial agreements; providing for rights and remedies of bondholders; providing for lease-purchase agreement with the Department of Transportation; providing the department may be appointed agent of authority for construction; providing for acquisition of lands and property; providing for cooperation with other

units, boards, agencies, and individuals;
 providing covenant of the state; providing for
 exemption from taxation; providing for
 eligibility for investments and security;
 providing pledges shall be enforceable by
 bondholders; providing for construction and
 application; providing for future expiration of
 the act; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part X of chapter 348, Florida Statutes,
 consisting of sections 348.993, 348.9931, 348.9932, 348.9933,
 348.9934, 348.9935, 348.9936, 348.9937, 348.9938, 348.9939,
 348.994, 348.9941, 348.9942, 348.9943, 348.9944, 348.9945, and
 348.9946, is created to read:

Part X

Southwest Florida Expressway Authority

348.993 Popular name.--This part may be referred to by
the popular name the "Southwest Florida Expressway Authority
Law."

348.9931 Definitions.--The following terms, whenever
used or referred to in this part, shall have the following
meanings, except in those instances where the context clearly
indicates otherwise:

(1) "Agency of the state" means and includes the state
and any department of, or corporation, agency, or
instrumentality heretofore or hereafter created, designated,
or established by, the state.

(2) "Authority" means the body politic and corporate,
and agency of the state, created by this part.

1 (3) "Bonds" means and includes the notes, bonds,
2 refunding bonds, or other evidences of indebtedness or
3 obligations, in either temporary or definitive form, which the
4 authority is authorized to issue pursuant to this part.

5 (4) "County" means the Counties of Collier and Lee.

6 (5) "DBOM contract" means the document and all
7 concomitant rights approved by the authority providing the
8 selected person or entity the exclusive right to design,
9 build, operate, and maintain the Southwest Florida
10 Transportation System.

11 (6) "DBOMF contract" means the document and all
12 concomitant rights approved by the authority providing the
13 selected person or entity the exclusive right to design,
14 build, operate, maintain, and finance all or a portion of the
15 Southwest Florida Transportation System.

16 (7) "Department" means the Department of
17 Transportation existing under chapters 334-339.

18 (8) "Expressway" is the same as limited access
19 expressway.

20 (9) "Federal agency" means and includes the United
21 States, the President of the United States, or any department
22 of, or corporation, agency, or instrumentality heretofore or
23 hereafter created, designated, or established by, the United
24 States.

25 (10) "Lease-purchase agreement" means the
26 lease-purchase agreements which the authority is authorized
27 pursuant to this part to enter into with the Department of
28 Transportation.

29 (11) "Limited access expressway" means a street or
30 highway especially designed for through traffic and over,
31 from, or to which no person shall have the right of easement,

1 use, or access except in accordance with the rules and
2 regulations promulgated and established by the authority for
3 the use of such facility. Such highways or streets may be
4 parkways, from which trucks, buses, and other commercial
5 vehicles shall be excluded, or they may be freeways open to
6 use by all customary forms of street and highway traffic.

7 (12) "Members" means the governing body of the
8 authority, and the term "member" means one of the individuals
9 constituting such governing body.

10 (13) "Proposed project" means a facility which, if
11 constructed, will become part of the Southwest Florida
12 Transportation System, and it shall identify the general
13 corridor and alignment of the facility and its limits.
14 Further, it shall mean a project or projects which are in the
15 long-range transportation plan of Lee County or Collier
16 County, or both plans if the proposed project is to be located
17 in both counties.

18 (14) "Southwest Florida Transportation System" means
19 any and all expressways and appurtenant facilities thereto,
20 including, but not limited to, all approaches, roads, bridges,
21 and avenues of access for said expressway or expressways,
22 whether tolled or nontolled, or such other facility as the
23 authority determines or designates.

24 (15) "State Board of Administration" means the body
25 corporate existing under the provisions of s. 9, Art. XII of
26 the State Constitution, or any successor thereto.

27 (16) "System" means the Southwest Florida
28 Transportation System.

1 Words importing singular number include the plural number in
2 each case and vice versa, and words importing persons include
3 firms and corporations.

4 348.9932 Southwest Florida Expressway Authority.--

5 (1) There is hereby created and established a body
6 politic and corporate, an agency of the state, encompassing
7 Collier and Lee Counties, to be known as the Southwest Florida
8 Expressway Authority, hereinafter referred to as the
9 "authority."

10 (2) The governing body of the authority shall consist
11 of seven voting members and one nonvoting member, as set forth
12 in this subsection.

13 (a) 1.a. One member who is a permanent resident of
14 Collier County and one member who is a permanent resident of
15 Lee County shall be appointed by the Governor to serve a term
16 of 4 years each. The Governor shall select his appointees from
17 a list submitted by the board of county commissioners of each
18 county, with each list recommending five candidates from their
19 respective county.

20 b. One member who is a permanent resident of Collier
21 County shall be appointed by the Board of County Commissioners
22 of Collier County and one member who is a permanent resident
23 of Lee County shall be appointed by the Board of County
24 Commissioners of Lee County, to serve a term of 4 years each.

25 2. Each member appointed under this paragraph shall be
26 a person of outstanding reputation for integrity,
27 responsibility, and business ability and shall have an
28 interest in ground transportation. No elected official and no
29 person who is an employee, in any capacity, of Collier County
30 or Lee County or of any city within Collier County or Lee
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1 County shall be an appointed member of the authority except as
2 set forth in this section.

3 3. Each appointed member shall be a resident of his or
4 her respective county during his or her entire term.

5 4. Each appointed member shall be a voting member and
6 shall hold office until his or her successor has been
7 appointed and has qualified. A vacancy occurring during a term
8 shall be filled only for the remainder of the unexpired term.

9 (b) One member from Collier County and one member from
10 Lee County shall be selected by the members of the respective
11 county commission from among its members to serve as a voting
12 member for a term of 2 years each. Each commissioner must be a
13 member of the county commission when selected and for the full
14 extent of the term of this selection.

15 (c) The executive director of the Southwest Florida
16 Regional Planning Council shall serve as the seventh voting
17 member.

18 (d) The district secretary of the Department of
19 Transportation serving in the district that contains Collier
20 County and Lee County shall serve as a nonvoting member.

21 (e) Any member of the authority shall be eligible for
22 reappointment.

23 (3) (a) The authority shall elect one of its members as
24 chair of the authority. The authority shall also elect a
25 secretary and a treasurer who may or may not be members of the
26 authority. The chair, secretary, and treasurer shall hold such
27 offices at the will of the authority. Four members of the
28 authority shall constitute a quorum, and a vote of the
29 majority of those present shall be necessary for any action
30 taken by the authority. No vacancy in the authority shall
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1 impair the right of a quorum of the authority to exercise all
2 of the rights and perform all of the duties of the authority.

3 (b) Upon the effective date of his or her appointment,
4 or as soon thereafter as practicable, each appointed member of
5 the authority shall enter upon his or her duties.

6 (4) If an expansion of the project into Charlotte
7 County is warranted and desirable as indicated by the adoption
8 of resolutions in support of the expansion by the authority
9 and by each Board of County Commissioners of Charlotte,
10 Collier, and Lee Counties, the membership of the authority
11 shall be expanded as set forth in this subsection. The
12 authority shall have nine voting members and two nonvoting
13 members. The executive director of the Southwest Florida
14 Regional Planning Council will shift from a voting member to a
15 nonvoting member. Three members from Charlotte County shall be
16 added to the authority and each shall be a voting member. The
17 Charlotte County members shall be selected in the same manner
18 as provided for the appointment of the members from Collier
19 and Lee Counties.

20 (5) (a) The authority may employ an executive director,
21 its own counsel and legal staff, technical experts, engineers,
22 and such employees, permanent or temporary, as it may require;
23 may determine the qualifications and fix the compensation of
24 such persons, firms, or corporations; and may employ a fiscal
25 agent or agents. The authority may delegate to one or more of
26 its agents or employees such of its power as it shall deem
27 necessary to carry out the purposes of this part, subject
28 always to the supervision and control of the authority.
29 Members of the authority may be removed from office by the
30 Governor for misconduct, malfeasance, misfeasance, or
31 nonfeasance in office.

1 (b) Members of the authority shall be entitled to
2 receive from the authority their travel and other necessary
3 expenses incurred in connection with the business of the
4 authority as provided in s. 112.061, but they shall draw no
5 salaries or other compensation.

6 348.9933 Purposes and powers.--

7 (1) (a) The authority created and established by the
8 provisions of this part is hereby granted and shall have the
9 right to acquire, hold, construct, improve, maintain, operate,
10 own, and lease, in the capacity of lessor, the Southwest
11 Florida Transportation System, hereinafter referred to as the
12 "system."

13 (b) It is the express intention of this part that said
14 authority, in the construction of said Southwest Florida
15 Transportation System, within the geographic boundaries of
16 Collier and Lee Counties, is limited to the pursuit of tolled
17 expressway lanes on Interstate Highway 75 within these
18 counties. Further, the authority shall be authorized to
19 construct any extensions, additions, or improvements to said
20 system or appurtenant facilities, including all necessary
21 approaches, roads, bridges, and avenues of access, with such
22 changes, modifications, or revisions of said project as shall
23 be deemed desirable and proper with the concurrence of the
24 respective county commissions. The responsibilities of the
25 authority will not be expanded to cover any other projects
26 beyond Interstate 75 toll lanes and appurtenant facilities
27 unless resolutions in support of such expansion or other
28 project are adopted by the Boards of County Commissioners of
29 Lee and Collier Counties.

30 (2) The authority is hereby granted and shall have and
31 may exercise all powers necessary, appurtenant, convenient, or

1 incidental to the carrying out of the aforesaid purposes,
2 including, but not limited to, the following rights and
3 powers:

4 (a) To sue and be sued, implead and be impleaded,
5 complain, and defend in all courts.

6 (b) To adopt, use, and alter at will a corporate seal.

7 (c) To acquire by donation or otherwise, purchase,
8 hold, lease as lessee, and use any franchise or property,
9 real, personal, or mixed, tangible or intangible, or any
10 options thereof in its own name or in conjunction with others,
11 or interest therein, necessary or desirable for carrying out
12 the purposes of the authority, and to sell, lease as lessor,
13 transfer, and dispose of any property or interest therein at
14 any time acquired by it.

15 (d) To enter into and make leases for terms it deems
16 necessary, as either lessee or lessor, in order to carry out
17 the right to lease as set forth in this part.

18 (e) To enter into and make lease-purchase agreements
19 with the department for terms it deems necessary or until any
20 bonds secured by a pledge of rentals thereunder, and any
21 refundings thereof, are fully paid as to both principal and
22 interest, whichever is longer.

23 (f) To fix, alter, charge, establish, and collect
24 rates, fees, rentals, and other charges for the services and
25 facilities of the Southwest Florida Transportation System,
26 which rates, fees, rentals, and other charges shall always be
27 sufficient to comply with any covenants made with the holders
28 of any bonds issued pursuant to this part; provided, however,
29 that such right and power may be assigned or delegated, by the
30 authority, to the department.
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1 (g) To borrow money and make and issue negotiable
2 notes, bonds, refunding bonds, and other evidences of
3 indebtedness or obligations, either in temporary or definitive
4 form, hereinafter in this part sometimes called "bonds" of the
5 authority, for the purpose of financing all or part of the
6 improvement or extension of the Southwest Florida
7 Transportation System and appurtenant facilities, including
8 all approaches, streets, roads, bridges, and avenues of access
9 for said Southwest Florida Transportation System, and for any
10 other purpose authorized by this part; to secure the payment
11 of such bonds or any part thereof by a pledge of any or all of
12 its revenues, rates, fees, rentals, or other charges; and in
13 general to provide for the security of said bonds and the
14 rights and remedies of the holders thereof. The authority may
15 enter into an agreement between the authority and one or more
16 counties for the pledge of county gasoline tax funds, county
17 sales tax, or other county revenues to secure any bonds issued
18 for an authority project as authorized hereunder. In the event
19 the authority shall determine to fund or refund any bonds
20 theretofore issued by said authority, prior to the maturity
21 thereof, the proceeds of such funding or refunding bonds
22 shall, pending the prior redemption of the bonds to be funded
23 or refunded, be invested in direct obligations of the United
24 States, and it is the express intention of this part that such
25 outstanding bonds may be funded or refunded by the issuance of
26 bonds pursuant to this part.

27 (h) To make contracts of every name and nature,
28 including, but not limited to, partnerships providing for
29 participation in ownership and revenues, and to execute all
30 instruments necessary or convenient for the carrying on of its
31 business.

1 (i) Without limitation of the foregoing, to borrow
2 money and accept grants from, and to enter into contracts,
3 leases, or other transactions with, any federal agency, the
4 state, any agency of the state, Collier County, Lee County,
5 and any city within these two counties or with any other
6 public body of the state.

7 (j) To have the power of eminent domain, including the
8 procedural powers granted under chapters 73 and 74.

9 (k) To pledge, hypothecate, or otherwise encumber all
10 or any part of the revenues, rates, fees, rentals, or other
11 charges or receipts of the authority as security for all or
12 any of the obligations of the authority.

13 (l) To do all acts and things necessary or convenient
14 for the conduct of its business and the general welfare of the
15 authority in order to carry out the powers granted to it by
16 this part or any other law.

17 (m) With the consent of the county within whose
18 jurisdiction the following activities occur, to construct,
19 operate, and maintain roads, bridges, avenues of access,
20 thoroughfares, and boulevards outside the jurisdictional
21 boundaries of Collier and Lee Counties, together with the
22 right to construct, repair, replace, operate, install, and
23 maintain toll payment systems thereon, with all necessary and
24 incidental powers to accomplish the foregoing.

25 (3) The authority shall have no power at any time or
26 in any manner to pledge the credit or taxing power of the
27 state or any political subdivision or agency thereof,
28 including Collier and Lee Counties or any city within these
29 counties, nor shall any of the authority's obligations be
30 deemed to be obligations of the state or of any political
31 subdivision or agency thereof, nor shall the state or any

1 political subdivision or agency thereof, except the authority,
2 be liable for the payment of the principal of or interest on
3 such obligations unless agreed to by such entity.

4 348.9934 Procurement.--The authority is authorized to
5 procure commodities and the services of a qualified person or
6 entity to design, build, finance, operate, maintain, and
7 implement the Southwest Florida Transportation System,
8 including the use of a DBOM or DBOMF method using a request
9 for proposal, a request for qualifications, or an invitation
10 to negotiate.

11 348.9935 Bond financing authority for
12 improvements.--Pursuant to s. 11(f), Art. VII of the State
13 Constitution, the Legislature hereby approves for bond
14 financing by the Southwest Florida Expressway Authority
15 improvements to toll collection facilities, interchanges to
16 the legislatively approved regional transportation system, and
17 any other facility appurtenant, necessary, or incidental to
18 the approved system. Subject to terms and conditions of
19 applicable revenue bond resolutions and covenants, such costs
20 may be financed in whole or in part by revenue bonds issued
21 pursuant to s. 348.9936(1)(a) or (b) whether currently issued
22 or issued in the future, or by a combination of such bonds.

23 348.9936 Bonds of the authority.--

24 (1)(a) Bonds may be issued on behalf of the authority
25 pursuant to the State Bond Act.

26 (b) Alternatively, the authority may issue its own
27 bonds pursuant to this part at such times and in such
28 principal amount as, in the opinion of the authority, is
29 necessary to provide sufficient moneys for achieving its
30 purposes; however, such bonds may not pledge the full faith
31 and credit of the state. Bonds issued by the authority

1 pursuant to this paragraph or paragraph (a), whether on
2 original issuance or on refunding, shall be authorized by
3 resolution of the members thereof and may be either term or
4 serial bonds and shall bear such date or dates, mature at such
5 time or times, bear interest at such rate or rates, payable
6 semiannually, be in such denominations, be in such form,
7 either coupon or fully registered, carry such registration,
8 exchangeability, and interchangeability privileges, be payable
9 in such medium of payment and at such place or places, be
10 subject to such terms of redemption, and be entitled to such
11 priorities on the revenues, rates, fees, rentals, or other
12 charges or receipts of the authority, including any other
13 funds received by the authority pursuant to the terms of any
14 lease-purchase agreement between the authority and the
15 department, as such resolution or any resolution subsequent
16 thereto may provide. The bonds shall be executed either by
17 manual or facsimile signature by such officers as the
18 authority shall determine, provided that such bonds shall bear
19 at least one signature which is manually executed thereon, and
20 the coupons attached to such bonds shall bear the facsimile
21 signature or signatures of such officer or officers as shall
22 be designated by the authority and shall have the seal of the
23 authority affixed, imprinted, reproduced, or lithographed
24 thereon, all as may be prescribed in such resolution or
25 resolutions.

26 (c) Bonds issued pursuant to paragraph (a) or
27 paragraph (b) shall be sold at public sale in the same manner
28 provided by the State Bond Act. However, if the authority
29 shall, by official action at a public meeting, determine that
30 a negotiated sale of such bonds is in the best interest of the
31 authority, the authority may negotiate the sale of such bonds

1 with the underwriter or underwriters designated by the
2 authority and the Division of Bond Finance of the State Board
3 of Administration with respect to bonds issued pursuant to
4 paragraph (a) or solely the authority with respect to bonds
5 issued pursuant to paragraph (b). The authority's
6 determination to negotiate the sale of such bonds may be
7 based, in part, upon the written advice of the authority's
8 financial adviser. Pending the preparation of definitive
9 bonds, interim certificates may be issued to the purchaser or
10 purchasers of such bonds and may contain such terms and
11 conditions as the authority may determine.

12 (d) The authority may issue bonds pursuant to
13 paragraph (b) to refund any bonds previously issued regardless
14 of whether the bonds being refunded were issued by the
15 authority pursuant to this part or on behalf of the authority
16 pursuant to the State Bond Act.

17 (2) Any such resolution or resolutions authorizing any
18 bonds hereunder may contain provisions which shall be part of
19 the contract with the holders of such bonds, as to:

20 (a) The pledging of all or any part of the revenues,
21 rates, fees, rentals, or other charges or receipts of the
22 authority, derived by the authority, from the Southwest
23 Florida Transportation System.

24 (b) The completion, improvement, operation, extension,
25 maintenance, repair, lease, or lease-purchase agreement of
26 said system and the duties of the authority and others,
27 including the department, with reference thereto.

28 (c) Limitations on the purposes to which the proceeds
29 of the bonds, then or thereafter to be issued, or of any loan
30 or grant by the United States or the state may be applied.
31

1 (d) The fixing, charging, establishing, and collecting
2 of rates, fees, rentals, or other charges for use of the
3 services and facilities of the Southwest Florida
4 Transportation System or any part thereof.

5 (e) The setting aside of reserves or sinking funds or
6 repair and replacement funds and the regulation and
7 disposition thereof.

8 (f) Limitations on the issuance of additional bonds.

9 (g) The terms and provisions of any lease-purchase
10 agreement, deed of trust, or indenture securing the bonds or
11 under which the same may be issued.

12 (h) Any other or additional agreements with the
13 holders of the bonds which the authority may deem desirable
14 and proper.

15 (3) The authority may employ fiscal agents as provided
16 by this part, or the State Board of Administration may, upon
17 request of the authority, act as fiscal agent for the
18 authority in the issuance of any bonds which may be issued
19 pursuant to this part, and the State Board of Administration
20 may, upon request of the authority, take over the management,
21 control, administration, custody, and payment of any or all
22 debt services or funds or assets now or hereafter available
23 for any bonds issued pursuant to this part. The authority may
24 enter into any deeds of trust, indentures, or other agreements
25 with its fiscal agent, or with any bank or trust company
26 within or without the state, as security for such bonds and
27 may, under such agreements, sign and pledge all or any of the
28 revenues, rates, fees, rentals, or other charges or receipts
29 of the authority. Such deed of trust, indenture, or other
30 agreement may contain such provisions as are customary in such
31

1 instruments or, as the authority may authorize, including, but
2 without limitation, provisions as to:

3 (a) The completion, improvement, operation, extension,
4 maintenance, repair, and lease of, or lease-purchase agreement
5 relating to, the Southwest Florida Transportation System and
6 the duties of the authority and others, including the
7 department, with reference thereto.

8 (b) The application of funds and the safeguarding of
9 funds on hand or on deposit.

10 (c) The rights and remedies of the trustee and the
11 holders of the bonds.

12 (d) The terms and provisions of the bonds or the
13 resolutions authorizing the issuance of same.

14 (4) Any of the bonds issued pursuant to this part are,
15 and are hereby declared to be, negotiable instruments and
16 shall have all the qualities and incidents of negotiable
17 instruments under the law merchant and the negotiable
18 instruments law of the state.

19 (5) Notwithstanding any of the provisions of this
20 part, each project, building, or facility which has been
21 financed by the issuance of bonds or other evidence of
22 indebtedness under this part and any refinancing thereof is
23 hereby approved as provided for in s. 11(f), Art. VII of the
24 State Constitution.

25 348.9937 Remedies of the bondholders.--

26 (1) The rights and the remedies herein conferred upon
27 or granted to the bondholders shall be in addition to and not
28 in limitation of any rights and remedies lawfully granted to
29 such bondholders by the resolution or resolutions providing
30 for the issuance of bonds, or by a lease-purchase agreement,
31 deed of trust, indenture, or other agreement under which the

1 bonds may be issued or secured. In the event that the
2 authority shall default in the payment of the principal of or
3 interest on any of the bonds issued pursuant to the provisions
4 of this part after such principal of or interest on said bonds
5 shall have become due, whether at maturity or upon call for
6 redemption, or the department shall default in any payments
7 under, or covenants made in, any lease-purchase agreement
8 between the authority and the department, and such default
9 shall continue for a period of 30 days, or in the event that
10 the authority or the department shall fail or refuse to comply
11 with the provisions of this part or any agreement made with,
12 or for the benefit of, the holders of the bonds, the holders
13 of 25 percent in aggregate principal amount of the bonds then
14 outstanding shall be entitled as of right to the appointment
15 of a trustee to represent such bondholders for the purposes
16 hereof; provided, however, that such holders of 25 percent in
17 aggregate principal amount of the bonds then outstanding shall
18 have first given notice of their intention to appoint a
19 trustee, to the authority and to the department. Such notice
20 shall be deemed to have been given if given in writing,
21 deposited in a securely sealed postpaid wrapper, mailed at a
22 regularly maintained United States post office box or station,
23 and addressed, respectively, to the chair of the authority and
24 to the secretary of the Department of Transportation at the
25 principal office of the department.

26 (2) Such trustee, and any trustee under any deed of
27 trust, indenture, or other agreement, may, and upon written
28 request of the holders of 25 percent, or such other
29 percentages as may be specified in any deed of trust,
30 indenture, or other agreement aforesaid, in principal amount
31

1 of the bonds then outstanding, shall, in any court of
2 competent jurisdiction, in his, her, or its own name:

3 (a) By mandamus or other suit, action, or proceeding
4 at law or in equity, enforce all rights of the bondholders,
5 including the right to require the authority to fix,
6 establish, maintain, collect, and charge rates, fees, rentals,
7 and other charges, adequate to carry out any agreement as to,
8 or pledge of, the revenues or receipts of the authority to
9 carry out any other covenants and agreements with or for the
10 benefit of the bondholders, and to perform its and their
11 duties under this part.

12 (b) By mandamus or other suit, action, or proceeding
13 at law or in equity, enforce all rights of the bondholders
14 under or pursuant to any lease-purchase agreement between the
15 authority and the department, including the right to require
16 the department to make all rental payments required to be made
17 by it under the provisions of any such lease-purchase
18 agreement, and to require the department to carry out any
19 other covenants and agreements with or for the benefit of the
20 bondholders, and to perform its and their duties under this
21 part.

22 (c) Bring suit upon the bonds.

23 (d) By action or suit in equity, require the authority
24 or the department to account as if it were the trustee of an
25 express trust for the bondholders.

26 (e) By action or suit in equity, enjoin any acts or
27 things which may be unlawful or in violation of the rights of
28 the bondholders.

29 (3) Any trustee, when appointed as aforesaid or acting
30 under a deed of trust, indenture, or other agreement, and
31 whether or not all bonds have been declared due and payable,

1 shall be entitled as of right to the appointment of a
2 receiver, who may enter upon and take possession of the
3 Southwest Florida Transportation System or the facilities or
4 any part or parts thereof, the rates, fees, rentals, or other
5 revenues, charges, or receipts from which are, or may be,
6 applicable to the payment of the bonds so in default, and
7 subject to and in compliance with the provisions of any
8 lease-purchase agreement between the authority and the
9 department operate and maintain the same, for and on behalf of
10 and in the name of, the authority, the department, and the
11 bondholders, and collect and receive all rates, fees, rentals,
12 and other charges or receipts or revenues arising therefrom in
13 the same manner as the authority or the department might do,
14 and shall deposit all such moneys in a separate account and
15 apply the same in such manner as the court shall direct. In
16 any suit, action, or proceeding by the trustee, the fees,
17 counsel fees, and expenses of the trustee, and said receiver,
18 if any, and all costs and disbursements allowed by the court
19 shall be a first charge on any rates, fees, rentals, or other
20 charges, revenues, or receipts derived from the Southwest
21 Florida Transportation System, or the facilities or services
22 or any part or parts thereof, including payments under any
23 such lease-purchase agreement as aforesaid which said rates,
24 fees, rentals, or other charges, revenues, or receipts shall
25 or may be applicable to the payment of the bonds so in
26 default. Such trustee shall, in addition to the foregoing,
27 have and possess all of the powers necessary or appropriate
28 for the exercise of any functions specifically set forth
29 herein or incident to the representation of the bondholders in
30 the enforcement and protection of their rights.
31

1 (4) Nothing in this section or any other section of
2 this part shall authorize any receiver appointed pursuant
3 hereto for the purpose, subject to and in compliance with the
4 provisions of any lease-purchase agreement between the
5 authority and the department, of operating and maintaining the
6 Southwest Florida Transportation System or any facilities or
7 part or parts thereof to sell, assign, mortgage, or otherwise
8 dispose of any of the assets of whatever kind and character
9 belonging to the authority. It is the intention of this part
10 to limit the powers of such receiver, subject to and in
11 compliance with the provisions of any lease-purchase agreement
12 between the authority and the department, to the operation and
13 maintenance of the Southwest Florida Transportation System, or
14 any facility or part or parts thereof, as the court may
15 direct, in the name and for and on behalf of the authority,
16 the department, and the bondholders, and no holder of bonds on
17 the authority nor any trustee shall ever have the right in any
18 suit, action, or proceeding at law or in equity to compel a
19 receiver, nor shall any receiver be authorized or any court be
20 empowered to direct the receiver to sell, assign, mortgage, or
21 otherwise dispose of any assets of whatever kind or character
22 belonging to the authority.

23 348.9938 Lease-purchase agreement.--

24 (1) In order to effectuate the purposes of this part
25 and as authorized by this part, the authority may enter into a
26 lease-purchase agreement with the department relating to and
27 covering the Southwest Florida Transportation System.

28 (2) Such lease-purchase agreement shall provide for
29 the leasing of the Southwest Florida Transportation System by
30 the authority, as lessor, to the department, as lessee; shall
31 prescribe the term of such lease and the rentals to be paid

1 thereunder; and shall provide that upon the completion of the
2 faithful performance thereunder and the termination of such
3 lease-purchase agreement, title in fee simple absolute to the
4 Southwest Florida Transportation System as then constituted
5 shall be transferred in accordance with law by the authority
6 to the state and the authority shall deliver to the department
7 such deeds and conveyances as shall be necessary or convenient
8 to vest title in fee simple absolute in the state.

9 (3) Such lease-purchase agreement may include such
10 other provisions, agreements, and covenants as the authority
11 and the department deem advisable or required, including, but
12 not limited to, provisions as to the bonds to be issued under,
13 and for the purposes of, this part; the completion, extension,
14 improvement, operation, and maintenance of the Southwest
15 Florida Transportation System and the expenses and the cost of
16 operation of said authority; the charging and collection of
17 tolls, rates, fees, and other charges for the use of the
18 services and facilities thereof; the application of federal or
19 state grants or aid which may be made or given to assist the
20 authority in the completion, extension, improvement,
21 operation, and maintenance of the Southwest Florida
22 Transportation System, which the authority is hereby
23 authorized to accept and apply to such purposes; the
24 enforcement of payment and collection of rentals; and any
25 other terms, provisions, or covenants necessary, incidental,
26 or appurtenant to the making of and full performance under
27 such lease-purchase agreement.

28 (4) The department, as lessee under such
29 lease-purchase agreement, is hereby authorized to pay as
30 rentals thereunder any rates, fees, charges, funds, moneys,
31 receipts, or income accruing to the department from the

1 operation of the Southwest Florida Transportation System and
2 may also pay as rentals any appropriations received by the
3 department pursuant to any act of the Legislature of the state
4 heretofore or hereafter enacted; provided, however, that
5 nothing herein nor in such lease- purchase agreement is
6 intended to nor shall this part or such lease-purchase
7 agreement require the making or continuance of such
8 appropriations, nor shall any holder of bonds issued pursuant
9 to this part ever have any right to compel the making or
10 continuance of such appropriations.

11 (5) Said department shall have power to covenant in
12 any lease-purchase agreement that it will pay all or any part
13 of the cost of the operation, maintenance, repair, renewal,
14 and replacement of said system, and any part of the cost of
15 completing said system to the extent that the proceeds of
16 bonds issued therefor are insufficient, from sources other
17 than the revenues derived from the operation of said system.
18 Said department may also agree to make such other payments
19 from any moneys available to said commission, said county, or
20 said city in connection with the construction or completion of
21 said system as shall be deemed by said department to be fair
22 and proper under any such covenants heretofore or hereafter
23 entered into.

24 (6) Said system shall be a part of the state road
25 system and said department is hereby authorized, upon the
26 request of the authority, to expend out of any funds available
27 for the purpose such moneys, and to use such of its
28 engineering and other forces, as may be necessary and
29 desirable in the judgment of said department, for the
30 operation of said authority and for traffic surveys, borings,
31

1 surveys, preparation of plans and specifications, estimates of
2 cost and other preliminary engineering, and other studies.

3 348.9939 Department may be appointed agent of
4 authority for construction.--The department may be appointed
5 by said authority as its agent for the purpose of constructing
6 improvements and extensions to the Southwest Florida
7 Transportation System and for the completion thereof. In such
8 event, the authority shall provide the department with
9 complete copies of all documents, agreements, resolutions,
10 contracts, and instruments relating thereto and shall request
11 the department to do such construction work including the
12 planning, surveying, and actual construction of the
13 completion, extensions, and improvements to the Southwest
14 Florida Transportation System and shall transfer to the credit
15 of an account of the department in the treasury of the state
16 the necessary funds therefor, and the department shall
17 thereupon be authorized, empowered, and directed to proceed
18 with such construction and to use the said funds for such
19 purpose in the same manner that it is now authorized to use
20 the funds otherwise provided by law for its use in
21 construction of roads and bridges.

22 348.994 Acquisition of lands and property.--

23 (1) For the purposes of this part, the Southwest
24 Florida Expressway Authority may acquire private or public
25 property and property rights, including rights of access, air,
26 view, and light, by gift, devise, purchase, or condemnation by
27 eminent domain proceedings, as the authority may deem
28 necessary for any of the purposes of this part, including, but
29 not limited to, any lands reasonably necessary for securing
30 applicable permits, areas necessary for management of access,
31 borrow pits, drainage ditches, water retention areas, rest

1 areas, replacement access for landowners whose access is
2 impaired due to the construction of a facility, and
3 replacement rights-of-way for relocated rail and utility
4 facilities; for existing, proposed, or anticipated
5 transportation facilities on the Southwest Florida
6 Transportation System or in a transportation corridor
7 designated by the authority. The authority shall also have the
8 power to condemn any material and property necessary for such
9 purposes.

10 (2) The right of eminent domain herein conferred shall
11 be exercised by the authority in the manner provided by law.

12 (3) When the authority acquires property for a
13 transportation facility or in a transportation corridor, it is
14 not subject to any liability imposed by chapter 376 or chapter
15 403 for preexisting soil or groundwater contamination due
16 solely to its ownership. This section does not affect the
17 rights or liabilities of any past or future owners of the
18 acquired property, nor does it affect the liability of any
19 governmental entity for the results of its actions which
20 create or exacerbate a pollution source. The authority and the
21 Department of Environmental Protection may enter into
22 interagency agreements for the performance, funding, and
23 reimbursement of the investigative and remedial acts necessary
24 for property acquired by the authority.

25 348.9941 Cooperation with other units, boards,
26 agencies, and individuals.--Express authority and power is
27 hereby given and granted any county, municipality, drainage
28 district, road and bridge district, school district, or any
29 other political subdivision, board, commission, or individual
30 in, or of, the state to make and enter into with the authority
31 contracts, leases, conveyances, partnerships, or other

1 agreements within the provisions and purposes of this part.
2 The authority is hereby expressly authorized to make and enter
3 into contracts, leases, conveyances, partnerships, and other
4 agreements with any political subdivision, agency, or
5 instrumentality of the state and any and all federal agencies,
6 corporations, and individuals for the purpose of carrying out
7 the provisions of this part.

8 348.9942 Covenant of the state.--The state does hereby
9 pledge to and agrees with any person, firm, corporation, or
10 federal or state agency subscribing to or acquiring the bonds
11 to be issued by the authority for the purposes of this part
12 that the state will not limit or alter the rights hereby
13 vested in the authority and the department until all bonds at
14 any time issued, together with the interest thereon, are fully
15 paid and discharged insofar as the same affects the rights of
16 the holders of bonds issued hereunder. The state does further
17 pledge to and agree with the United States that in the event
18 any federal agency shall construct or contribute any funds for
19 the completion, extension, or improvement of the Southwest
20 Florida Transportation System, or any part or portion thereof,
21 the state will not alter or limit the rights and powers of the
22 authority and the department in any manner which would be
23 inconsistent with the continued maintenance and operation of
24 the Southwest Florida Transportation System or the completion,
25 extension, or improvement thereof or which would be
26 inconsistent with the due performance of any agreements
27 between the authority and any such federal agency, and the
28 authority and the department shall continue to have and may
29 exercise all powers herein granted, so long as the same shall
30 be necessary or desirable for the carrying out of the purposes
31 of this part and the purposes of the United States in the

1 completion, extension, or improvement of the Southwest Florida
2 Transportation System or any part or portion thereof.

3 348.9943 Exemption from taxation.--The effectuation of
4 the authorized purposes of the authority created under this
5 part is, shall, and will be in all respects for the benefit of
6 the people of the state, for the increase of their commerce
7 and prosperity, and for the improvement of their health and
8 living conditions, and since such authority will be performing
9 essential governmental functions in effectuating such
10 purposes, such authority shall not be required to pay any
11 taxes or assessments of any kind or nature whatsoever upon any
12 property acquired or used by it for such purposes, or upon any
13 rates, fees, rentals, receipts, income, or charges at any time
14 received by it, and the bonds issued by the authority, their
15 transfer, and the income therefrom, including any profits made
16 on the sale thereof, shall at all times be free from taxation
17 of any kind by the state, or by any political subdivision,
18 taxing agency, or instrumentality thereof. The exemption
19 granted by this section shall not be applicable to any tax
20 imposed by chapter 220 on interest, income, or profits on debt
21 obligations owned by corporations.

22 348.9944 Eligibility for investments and
23 security.--Any bonds or other obligations issued pursuant to
24 this part shall be and constitute legal investments for banks,
25 savings banks, trustees, executors, administrators, and all
26 other fiduciaries and for all state, municipal, and other
27 public funds and shall also be and constitute securities
28 eligible for deposit as security for all state, municipal, or
29 other public funds, notwithstanding the provisions of any
30 other law or laws to the contrary.

1 348.9945 Pledges enforceable by bondholders.--It is
2 the express intention of this part that any pledge by the
3 department of rates, fees, revenues, or other funds, as
4 rentals, to the authority, or any covenants or agreements
5 relative thereto, may be enforceable in any court of competent
6 jurisdiction against the authority or directly against the
7 department by any holder of bonds issued by the authority.

8 348.9946 This part complete and additional
9 authority.--

10 (1) The powers conferred by this part shall be in
11 addition and supplemental to the existing powers of said
12 authority and the department, and this part shall not be
13 construed as repealing any of the provisions of any other law,
14 general, special, or local, but to supersede such other laws
15 in the exercise of the powers provided in this part and to
16 provide a complete method for the exercise of the powers
17 granted in this part. The extension and improvement of said
18 Southwest Florida Transportation System, and the issuance of
19 bonds hereunder to finance all or part of the cost thereof,
20 may be accomplished upon compliance with the provisions of
21 this part without regard to or necessity for compliance with
22 the provisions, limitations, or restrictions contained in any
23 other general, special, or local law, including, but not
24 limited to, s. 215.821, and no approval of any bonds issued
25 under this part by the qualified electors or qualified
26 electors who are freeholders in the state or in said Collier
27 County or Lee County, or in any city within these two
28 counties, or in any other political subdivision of the state,
29 shall be required for the issuance of such bonds pursuant to
30 this part.

1 (2) This part shall not be deemed to repeal, rescind,
2 or modify any other law or laws relating to said State Board
3 of Administration, said Department of Transportation, or the
4 Division of Bond Finance of the State Board of Administration
5 but shall be deemed to and shall supersede such other law or
6 laws as are inconsistent with the provisions of this part,
7 including, but not limited to, s. 215.821.

8 Section 2. Sunset of the Southwest Florida Expressway
9 Authority's duties and powers.--The powers conferred to the
10 Southwest Florida Expressway Authority and part X of chapter
11 348, Florida Statutes, the statutory establishment of the
12 Southwest Florida Expressway Authority, shall expire 12 years
13 after this act takes effect if the Southwest Florida
14 Expressway Authority has no outstanding indebtedness, no
15 studies underway, no design underway, and no projects under
16 construction and is not operating or maintaining any part of
17 the system it was established to create.

18 Section 3. This act shall take effect upon resolutions
19 in support of this act being passed by both the Lee County
20 Board of County Commissioners and the Collier County Board of
21 County Commissioners, but no sooner than July 1, 2004, in the
22 event the boards pass such resolutions prior to that date;
23 except that, this section shall take effect upon this act
24 becoming a law.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1460

SPONSOR: Senator Campbell

SUBJECT: Crime Lab Personnel/Public Records

DATE: April 16, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.			HC	WD
3.	Rhea <i>gm</i>	Wilson <i>AW</i>	GO	
4.			RC	
5.				
6.				

I. Summary:

Senate Bill 1460 creates an exemption to public records requirements. It exempts certain personal information of current or former personnel, and their immediate families, of crime laboratories and medical examiner's offices. Definitions of crime laboratory and medical examiner's office personnel are provided in the bill. The bill provides a finding of public necessity for creating the exemption and further provides for repeal on October 2, 2009, unless it is reviewed and reenacted by the Legislature.

Article I, s. 24(c), Fla. Const., requires a two-thirds vote of each house for passage of a newly created public records or public meetings exemption.

This bill substantially amends the following section of the Florida Statutes: 119.07.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Article I, s. 24 of the State Constitution, provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution.

The term “public records” has been defined by the Legislature in s. 119.011(1), F.S., to include:

... all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution authorizes exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records. A law enacting an exemption must state with specificity the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose of the law, relate to one subject, and contain only exemptions to public records or meetings requirements. The law enacting an exemption may contain provisions governing enforcement.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida’s citizens to discover the actions of their government. *Christy v. Palm Beach County Sheriff’s Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997). The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Krischer v. D’Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987), review denied, 520 So.2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So.2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes certain records confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Attorney General Opinion 85-625. If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for

public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure. *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985). For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant. *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999). The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records. *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2d DCA 1990).

In *B.B.*, *infra*, at 34, the Court noted with regard to criminal discovery the following:

In the context of a criminal proceeding, the first district has indicated that “the provisions of Section 119.07, Florida Statutes, are not intended to limit the effect of Rule 3.220, the discovery provisions of the Florida Rules of Criminal Procedure,” so that a public records exemption cannot limit a criminal defendant’s access to discovery. *Ivester v. State*, 398 So.2d 926, 931 (Fla. 1st DCA 1981). Moreover, as the Supreme Court just reiterated in *Henderson v. State*, No. 92,885, 745 So.2d ----, 1999 WL 90142 (Fla. Feb. 18, 1999), “we do not equate the acquisition of public documents under chapter 119 with the rights of discovery afforded a litigant by judicially created rules of procedure.” Slip op. at 6, --- So.2d ---- (quoting *Wait v. Florida Power & Light Co.*, 372 So.2d 420, 425 (Fla.1979)).

In a footnote, (*B.B.*, *infra*, at 34 n. 4) the Court also noted:

We note that section 119.07(8), Florida Statutes (1997), provides that section 119.07 is “not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution....”

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

- (a) What specific records or meetings are affected by the exemption?
- (b) Whom does the exemption uniquely affect, as opposed to the general public?
- (c) What is the identifiable public purpose or goal of the exemption?
- (d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. The Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Current Similar Exemptions

Section 119.07 (3)(i), F.S., currently provides exemptions for certain personal information for the following groups of people and their immediate families:

- active or former law enforcement personnel, including correctional and correctional probation officers;
- certain investigators with the Department of Children and Family Services;
- certain investigators with the Department of Health;
- certain investigators with the Department of Revenue;
- certified firefighters;
- state judges;
- current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;
- certain human resource, labor relations, or employee relations officials charged with “hiring and firing”; and
- code enforcement officers.

The personal information that is exempt from public record disclosure for the people listed above, and their immediate families, includes: the home address, telephone number, social security number, photographs of the individuals, their spouses and children as well as places of employment of the spouse and children, and the day care facilities or schools attended by the children.

III. Effect of Proposed Changes:

Senate Bill 1460 creates the same exemption from disclosure of certain personal information described above for current or former personnel of crime laboratories or medical examiner’s offices, their spouses and children.

The persons to who the newly-created exemption applies are defined as personnel whose primary duties or responsibilities include performing laboratory and analytical work in criminal identification and investigation; photographing crime scenes; classifying, evaluating, and identifying fingerprints; or their supervisors.

The personal information exempted by the bill is the home address, telephone number, social security number, and photographs of the individuals, their spouses and children. Also exempted are the places of employment of the spouse and children, and the day care facilities or schools attended by the children.

The bill provides for repeal of this new exemption on October 2, 2009, unless it is reviewed and reenacted by the Legislature.

The bill sets forth the “justification” or public necessity for the exemption as being a potential for harm or threat by a criminal defendant, or friend or family member of a criminal defendant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the State Constitution, authorizes the Legislature to enact general laws creating exemptions provided that such law states with specificity the public necessity justifying the exemption and provided that such exemption is no broader than necessary to accomplish the stated purpose of the law.¹ The stated public necessity for this exemption could more fully explicate the basis for the exemption in order to strengthen the grounds that support it.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999).

Bill No. SB 1460Amendment No. 

034230

CHAMBER ACTION

SenateHouse**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY****DATE** 4-16-04**TIME** 10:45 A.M.

Senator Campbell moved the following amendment:

Senate Amendment

On page 5, lines 7-12, delete those lines

and insert: and their families is a public necessity.
Personnel of a crime laboratory or medical examiner's office
are often called upon to provide their professional opinion
regarding the manner of death of a victim of crime. The
opinions they render may lead to the conviction of the
accused, which leads to the accused's incarceration or
execution. As a result, the current and former personnel could
be targeted for revenge by the family or friends of the person
who was convicted. Further, persons who might seek revenge
against current or former personnel of a crime laboratory or
medical examine's office could also target the family members
of these personnel. If identifying information of current or
former personnel of a crime laboratory or medical examiner's
office or their family members is not made exempt from public
records requirements, it would be much easier for persons with
an intent to seek revenge to locate these personnel and their

Bill No. SB 1460

Amendment No. _____



034230

1 families and cause them harm. Thus, the Legislature finds that
2 it is a public necessity to exempt the home addresses,
3 telephone numbers, social security numbers, and photographs of
4 current former personnel of a crime laboratory or medical
5 examiner's office; the names, home addresses, telephone
6 numbers, social security numbers, photographs, and places of
7 employment of their spouses and children; and the names and
8 locations of schools and day care facilities attended by the
9 children of such personnel.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

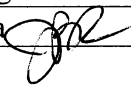

BILL: CS/SB 2704

SPONSOR: Children and Families Committee and Senator Atwater

SUBJECT: Identity of Child/ Public Records

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.	Dugger	Cannon	CJ	Fav/1 amendment
3.	Rhea 	Wilson 	GO	
4.			RC	
5.				
6.				

I. Summary:

The Committee Substitute for SB 2704 amends s. 119.07(3), F.S., to create a public records exemption for information provided to a children's services council or its contracted service provider or researcher regarding research or provision of services that would identify a child. The information provided an exemption from public disclosure by the bill includes the names, addresses, telephone numbers, social security numbers, photographs, or other information that would identify the child or lead to the identity of the child. The exemption is repealed effective October 2, 2009, unless reviewed and reenacted by the Legislature.

This bill substantially amends section 119.07 of the Florida Statutes.

II. Present Situation:

Public Records

Section 24 of Article I of the Florida Constitution provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law based on an expressed statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in ch. 119, F.S., which requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any

reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee [s. 119.07(1), F.S.]. Chapter 119, F.S., also provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose, and it must be no broader than necessary to meet the public purpose it serves [s. 119.15(4)(b), F.S.]. The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose cannot be accomplished without the exemption and satisfies one of the following three criteria relating to the sensitivity and confidentiality of the information:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The Open Government Sunset Review Act of 1995 provides for the automatic five-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption [s. 119.15(3)(a), F.S.].

Children's Services Councils

In 1986 the Legislature provided each county with the authority to create in ordinance an independent special district governed by a council that would provide funding for children's services [ch. 86-197, L.O.F.]. Services are to be funded through an ad valorem property tax of not more than .50 mill, subject to the approval of the voters and pursuant to the procedures for levying millages provided in s. 200.065, F.S., [s. 125.901(1) and (3)(b), F.S.]. Once the millage is approved by the electorate, approval in subsequent years to levy the millage is not required. Section 125.901, F.S., provides for financial and budget procedure requirements for councils. Counties may establish children's services councils that are not funded by the ad valorem tax but instead are supported by appropriations from the governing body of the county.

Currently, there are 15 children's services councils in Florida. Of these councils, 13 were created pursuant to s. 125.901, F.S., and two were established as a result of separate legislative acts. Specifically, the Juvenile Welfare Board of Pinellas County was created in 1945 by ch. 23483, L.O.F.,¹ and has had a similar purpose and function as described in s. 125.901, F.S., but with a maximum millage rate of \$1.00 for each \$1,000 assessed valuation of property. Chapter 2003-320, L.O.F., codified all prior special acts relating to the Juvenile Welfare Board.

¹ House of Representatives Local Bill Staff Analysis for HB 355, March 27, 2003.

The Children's Services Council of Broward County was created with ch. 2000-461, L.O.F., and also has a similar purpose and function as described in s. 125.901, F.S.

Section 125.901, F.S., which sets forth the provisions for these children's services councils, ascribes the following functions to the councils: to provide preventive, developmental, treatment, rehabilitative, and other services for children; to provide funds to other agencies operating for the benefit of children; to conduct research and collect data to assist in determining the needs of the children in the county; and to coordinate with providers of children's services to prevent duplication of services. As the funder, service provider, or researcher of children's issues and children's services, the children's services councils receive specific information on individual children and their families, including names, addresses, telephone numbers, social security numbers, and photographs, as do the service providers and researchers they often contract with to directly perform these functions. Disclosure of information that would identify particular children could result in the information being used to locate and potentially harm a child. While some of the information received may carry the initial public records exemption provided to the information, such as information from child abuse records which continues to be exempt from public disclosure when provided to a contract provider for child protective services [s. 39.202, F.S.], other information regarding children is being received without any ability to protect its release.

III. Effect of Proposed Changes:

The Committee Substitute for SB 2704 amends s. 119.07(3), F.S., to create a public records exemption for information provided to a children's services council or its contracted service provider or researcher regarding research or provision of services that would identify a child. The information provided an exemption from public disclosure by the bill includes the names, addresses, telephone numbers, social security numbers, photographs and other information that would identify the child or lead to the identity of the child. The exemption is repealed effective October 2, 2009, unless reviewed and reenacted by the Legislature.

Specifically, this bill creates a public records exemption for any information that would reveal the identity of a child that is provided to a children's services council or other entity created pursuant to s. 125.901, F.S., as well as the children's services council created under ch. 2000-461, L.O.F., or the Juvenile Welfare Board of Pinellas County codified under ch. 2003-320, L.O.F., for the purpose of providing services or conducting research. This public records exemption is also extended to the service providers and researchers that are under contract with a children's services council to provide services or conduct research regarding children. Information that would reveal the identity of a child is stipulated in the bill and includes the names, addresses, telephone numbers, social security numbers, and photographs of the child, parent, or legal guardian, as well as any other information that may directly or indirectly identify or lead to the identification of the child, including through the parent or guardian. Non-identifying information regarding the child would not be exempted from disclosure by this bill. This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

This public records exemption is similar to the public records exemption provided for client information in a number of different programs. Examples of other similar public records exemptions include the following: s. 409.821, F.S., which provides an exemption for any information identifying a Florida Kidcare applicant or enrollee; s. 411.011, F.S., which provides individual records of children enrolled in school readiness programs with an exemption; s. 414.295, F.S., which provides an exemption for personal identifying information of recipients of Temporary Assistance for Needy Families (TANF), their families, or other household members; and s. 430.105 F.S., which provides an exemption for personal identifying information relating to an individual's receipt of health related, elder care, or long term care services from the Department of Elderly Affairs.

The bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the availability of identifying information relative to a child who is receiving services from or involved in research being conducted by a children's services council, juvenile welfare board, or another similarly named entity or their contracted service provider or researcher would be contrary to the state's interest in protecting the public safety. The provision of an exemption from the public records requirements for such information would minimize the possibility that the information could be used to facilitate the stalking, harassment, abduction, or abuse of a child for whom the children's services councils have information.

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Deletes from the public necessity statement “or any other information” identifying the child.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

Bill No. CS for SB 2704Amendment No. 1

283082

CHAMBER ACTION

SenateHouse.
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The Committee on Criminal Justice recommended the following amendment:

Senate Amendment

On page 2, lines 23 and 24, delete those lines

and insert: addresses, telephone numbers, social security numbers, or photographs that would identify, or

Bill No. CS for SB 2704

Amendment No. _____



771302

CHAMBER ACTION

SenateHouse

GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY

DATE: 4-16-04

TIME: 3:00 P.M.

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (11) of section 125.901, Florida Statutes, is created to read:

125.901 Children's services; independent special district; council; powers, duties, and functions.--

(11) Personal identifying information of a child or the child's parent or guardian, held by a children's service council, juvenile welfare board, or other similar entity created under this section or by special law, or held by a service provider or researcher under contract with such entity, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such personal identifying information held on, before, or after the effective date of this exemption.

2. This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and

Bill No. CS for SB 2704Amendment No. 

771302

1 shall stand repealed on October 2, 2009, unless reviewed and
2 saved from repeal through reenactment by the Legislature.

3 Section 2. The Legislature finds that it is a public
4 necessity that personal identifying information of a child or
5 the child's parent or guardian held by a children's service
6 council, juvenile welfare board, or other similar entity
7 created under s. 125.901, Florida Statutes, or by special law,
8 or held by a service provider or researcher under contract
9 with such entity, must be exempt from subsection (1) and s.
10 24(a), Art. I of the State Constitution. The Legislature finds
11 that public availability of information that directly reveals
12 the identity of a child, or indirectly identifies the child
13 through the identification of the child's parent or guardian,
14 would be contrary to the state's compelling interest in
15 protecting the public safety. The Legislature finds that it is
16 necessary to exempt such personal identifying information so
17 that such information cannot be used to facilitate stalking,
18 harassment, abduction, or abuse of any child who is the
19 subject of such information. The Legislature finds that this
20 interest outweighs any public benefit derived from releasing
21 such identifying information. The Legislature further finds
22 that nonidentifying information regarding services provided
23 to, or research concerning, children shall not be exempted
24 from disclosure by this act.

25 Section 3. This act shall take effect July 1, 2004.

26
27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause

Bill No. CS for SB 2704Amendment No. 

771302

1 and insert:

2 A bill to be entitled

3 An act relating to a public records exemption
4 for identifying information; amending s.
5 125.901, F.S.; providing that personal
6 identifying information of a child or the
7 child's parent or guardian held by a children's
8 service council, juvenile welfare board, or
9 other entity created under that section or by
10 special law is exempt from the requirement that
11 public records be open to inspection and
12 duplication; providing for retroactive
13 application; providing for future repeal and
14 legislative review under the Open Government
15 Sunset Review Act of 1995; providing a
16 statement of public necessity; providing an
17 effective date.

Bill No. CS for SB 2704

Amendment No. _____



771302

CHAMBER ACTION

SenateHouse.
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.~~CONFIDENTIAL OVERSIGHT
AND PROSECUTION~~

DATE:

4-16-04

TIME:

3:00 P.m.

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (11) of section 125.901, Florida Statutes, is created to read:

125.901 Children's services; independent special district; council; powers, duties, and functions.--

(11) Personal identifying information of a child or the child's parent or guardian, held by a children's service council, juvenile welfare board, or other similar entity created under this section or by special law, or held by a service provider or researcher under contract with such entity, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such personal identifying information held on, before, or after the effective date of this exemption.

2. This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and

Bill No. CS for SB 2704

Amendment No. _____



771302

1 shall stand repealed on October 2, 2009, unless reviewed and
2 saved from repeal through reenactment by the Legislature.

3 Section 2. The Legislature finds that it is a public
4 necessity that personal identifying information of a child or
5 the child's parent or guardian held by a children's service
6 council, juvenile welfare board, or other similar entity
7 created under s. 125.901, Florida Statutes, or by special law,
8 or held by a service provider or researcher under contract
9 with such entity, must be exempt from subsection (1) and s.
10 24(a), Art. I of the State Constitution. The Legislature finds
11 that public availability of information that directly reveals
12 the identity of a child, or indirectly identifies the child
13 through the identification of the child's parent or guardian,
14 would be contrary to the state's compelling interest in
15 protecting the public safety. The Legislature finds that it is
16 necessary to exempt such personal identifying information so
17 that such information cannot be used to facilitate stalking,
18 harassment, abduction, or abuse of any child who is the
19 subject of such information. The Legislature finds that this
20 interest outweighs any public benefit derived from releasing
21 such identifying information. The Legislature further finds
22 that nonidentifying information regarding services provided
23 to, or research concerning, children shall not be exempted
24 from disclosure by this act.

25 Section 3. This act shall take effect July 1, 2004.

26
27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause

Bill No. CS for SB 2704

Amendment No. _____



771302

1 and insert:

2 A bill to be entitled

3 An act relating to a public records exemption
4 for identifying information; amending s.
5 125.901, F.S.; providing that personal
6 identifying information of a child or the
7 child's parent or guardian held by a children's
8 service council, juvenile welfare board, or
9 other entity created under that section or by
10 special law is exempt from the requirement that
11 public records be open to inspection and
12 duplication; providing for retroactive
13 application; providing for future repeal and
14 legislative review under the Open Government
15 Sunset Review Act of 1995; providing a
16 statement of public necessity; providing an
17 effective date.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

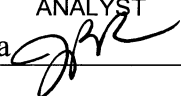

BILL: SB 2082

SPONSOR: Senator Aronberg

SUBJECT: Public Records Exemption

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea 	Wilson 	GO	
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

This bill creates a public records exemption for a child participant's name, home address, telephone number, and social security number. It exempts the name and location of the school attended by such participant. It also creates a public records exemption for the name, home address, telephone number, and social security number of the parent or guardian of such participant. The release of such information could create the opportunity for stalking, harassment, abduction, or abuse of children participating in these programs.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption.

This bill amends section 119.07(3)(i) of the Florida Statutes.

II. Present Situation:

A. Government-sponsored camps.

Government-sponsored camps and recreation programs for children collect personal identifying information regarding participants as part of such camp's or program's routine operations. Besides the child participant's name, the information includes their home addresses, phone numbers, social security numbers, photographs, and schools of attendance, and the names and

contact information for their parents or guardians. This information is a matter of public record, open for inspection and copying by any person so interested.

B. Public Records Requirements

Article I, s. 24 of the State Constitution, provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution.

The term “public records” has been defined by the Legislature in s. 19.011(1), F.S., to include:

... all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution authorizes exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records. A law enacting an exemption must state with specificity the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose of the law, relate to one subject, and contain only exemptions to public records or meetings requirements. The law enacting an exemption may contain provisions governing enforcement.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida’s citizens to discover the actions of their government. *Christy v. Palm Beach County Sheriff’s Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997). The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Krischer v. D’Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987), review denied, 520 So.2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So.2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes certain records confidential, with no provision for its release such that its confidential status will be maintained,

such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Attorney General Opinion 85-625. If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure. *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985). For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant. *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999). The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records. *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2d DCA 1990).

In *B.B.*, *infra*, at 34, the Court noted with regard to criminal discovery the following:

In the context of a criminal proceeding, the first district has indicated that “the provisions of Section 119.07, Florida Statutes, are not intended to limit the effect of Rule 3.220, the discovery provisions of the Florida Rules of Criminal Procedure,” so that a public records exemption cannot limit a criminal defendant’s access to discovery. *Ivester v. State*, 398 So.2d 926, 931 (Fla. 1st DCA 1981). Moreover, as the Supreme Court just reiterated in *Henderson v. State*, No. 92,885, 745 So.2d ----, 1999 WL 90142 (Fla. Feb. 18, 1999), “we do not equate the acquisition of public documents under chapter 119 with the rights of discovery afforded a litigant by judicially created rules of procedure.” Slip op. at 6, --- So.2d ---- (quoting *Wait v. Florida Power & Light Co.*, 372 So.2d 420, 425 (Fla.1979)).

In a footnote, (*B.B.*, *infra*, at 34 n. 4) the Court also noted:

We note that section 119.07(8), Florida Statutes (1997), provides that section 119.07 is “not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution....”

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

- (a) What specific records or meetings are affected by the exemption?
- (b) Whom does the exemption uniquely affect, as opposed to the general public?
- (c) What is the identifiable public purpose or goal of the exemption?
- (d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. The Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

III. Effect of Proposed Changes:

This bill creates a public records exemption for a child participant's name, home address, telephone number, social security number, and photographs. It also exempts the name and location of the school attended by such participant. Further, it creates a public records exemption for the name, home address, telephone number, and social security number of the parent or guardian of such participant. The stated public necessity for protecting such information is that release of that information could create the opportunity for stalking, harassment, abduction, or abuse of children participating in these programs.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. The only stated justification for the exemption is that release of certain information regarding child participants and their parents or guardians could create the opportunity for "stalking, harassment, abduction, or abuse of such children." The bill also exempts information regarding the parents of these children without providing more explanation regarding the public necessity. As such, the basis for the exemption could be challenged.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Compliance with public records requirements has a fiscal impact, though unquantifiable. Government employees must locate requested records and must examine every requested record to determine if a public records exemption prohibits release of all or part of a record.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It may be appropriate to make the exemption retroactive to ensure that records held prior to the effective date of the exemption are protected.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2158

SPONSOR: Senator Fasano

SUBJECT: Public Records/Surplus State-Owned Lands

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Favorable
2.	Rhea 	Wilson 	GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill provides a time-limited public records exemption for information regarding the value of lands determined by the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to be surplus lands and available for sale, exchange or disposal. The Division of State Lands (division) at the Department of Environmental Protection (DEP) is authorized to disclose appraisals, valuations, or valuation information about lands declared surplus under certain conditions, notwithstanding the exemption.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act of 1995, and is repealed on October 2, 2009, unless reviewed and reenacted by the Legislature. The bill establishes legislative findings that the temporary preservation of valuation information is a public necessity that ensures the maximum return to the state from the disposition of surplus lands.

This bill must be enacted by a two-thirds vote of each house of the Legislature.

This bill substantially amends s. 253.034, Florida Statutes.

II. Present Situation:

Access to Public Records and Meetings - s. 24, Art. I, State Constitution

In the 1992 General Election, more than 80 percent of the persons voting approved Revision #2 to the State Constitution entitled "Access to Public Records and Meetings." Section 24, Art. I of the State Constitution was created to establish that "every person has the right to inspect or copy any public record made or received in connection with the official business of any public body,

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."

Revision #2 also authorized the Legislature to create a public records exemption if the law establishing the exemption specified the public necessity of the exemption. In 2002, more than 75 percent of persons voting in the 2002 General Election approved Revision #4 to the State Constitution, entitled "Laws Providing Public Records or Meetings Exemptions; Two-Thirds Vote Required." Revision #4 amended s. 24, Art. I, to require that laws providing exemptions from public records or public meeting requirements must be passed by a two-thirds vote of each house of the Legislature.

Public Records - chapter 119, F.S.

Section 119.07 (1), F.S., provides that persons with custody of public records shall permit the record to be inspected and examined by any person desiring to do so at reasonable times and under reasonable conditions.

The "Open Government Sunset Review Act of 1995" (Act) established in s. 119.15, F.S., provides that in the 5th year after the enactment of a new public records exemption, the exemption shall be repealed unless the Legislature reviews and reenacts the exemption. Any law creating a new exemption must provide for the 5-year repeal and review. The Act provides that in the legislative review of the exemption the following criteria must be applied:

- What specific records or meetings are exempt;
- Who is specifically affected by the exemption, as opposed to the general public;
- What the identifiable public purpose or goal of the exemption is; and
- Can information being excluded be obtained by alternative means.

The Act also provides that an exemption can be created or maintained only if it serves an identifiable public purpose, and establishes identifiable public policy criteria as:

- The effective and efficient administration of a governmental program by the state or a political subdivision, and the impairment of that administration without the exemption;
- The protection of sensitive information which could be defamatory if released;
- The protection of information of a confidential nature concerning entities (such as formulas or patterns), or the compiling of information used to protect or further a business advantage if the business entity can be damaged by the release of the information.

Surplus State-owned Lands s. 253.034 (6), F.S.

Current law provides that the Trustees determine which state-owned lands can be surplus. For conservation lands, the Trustees must determine that lands are no longer needed for conservation purposes and can dispose of them with an affirmative vote of three of the four Trustees. The Trustees can determine that all other lands are no longer needed by the state and can dispose of them with an affirmative vote of three of the four Trustees.

The division serves as staff to the Trustees and is responsible for determining the sales price of lands declared to be surplus. The division must consider the appraised value of the property, or if the property is valued at less than \$100,000, must consider a comparable sales analysis or a

broker's opinion of value. For any property where one appraisal values property at more than \$1 million, two appraisals are required. For all property, the division must give consideration to the price originally paid by the state. Any public or private entity or person can request that the Trustees consider surplus property.

Under the provisions of s. 253.025 (6), F.S., appraisal reports for property being purchased by state are confidential and exempt from the provisions of s. 119.07 (1), until an option contract is executed, or until 2 weeks before a contract or agreement for purchase is considered for approval by the Trustees. The division is authorized to disclose appraisal information to public agencies or nonprofit organizations that agree to maintain the confidentiality of the appraisals when a joint acquisition with an agency or organization is being considered.

Division of State Lands, DEP

According to information provided by the DEP, a person interested in purchasing surplus state-owned lands with access to the appraisal of the surplus property being disposed of hinders an agent's ability to negotiate the transaction. A potential purchaser assumes that the property is being sold at appraised value, the negotiator has to defend the appraisal, or the purchaser wants to contest how the appraiser arrived at the property valuation.

III. Effect of Proposed Changes:

Section 1. Amends subsection (6) of s. 253.034, F.S., to provide that a written valuation for state-owned lands declared surplus by the Trustees, and related documents used to form the valuation, have a time-limited exemption from the public records provisions of s. 119.07 (01), F.S., and s. 24 (a), Art. I of the State Constitution. Provides that the exemption expires 2 weeks before the Board first considers an agreement associated with the disposal of the property.

Authorizes the division, notwithstanding the exemption, to disclose appraisals, valuations, or valuation information regarding surplus lands during negotiations for the sale or exchange of the land, during the marketing effort or bidding process, when the passage of time has made the conclusions of value invalid, or when negotiations or marketing efforts concerning the property are complete. Requires that the time-limited exemption be reviewed under the provisions of the Open Government Sunset Review Act of 1995. Repeals the time-limited exemption on October 2, 2009, unless the exemption is reviewed and reenacted by the Legislature.

Section 2. Establishes legislative findings that the temporary preservation of confidential information relating to the valuation of state-owned lands surplus under the provisions of s. 253.034 (6), F.S., is a public necessity, that the temporary exemption helps ensure the maximum return to the state from the disposition of surplus lands, and that earlier access to valuation information would impede development of agreements that maximize the state's return by providing interested persons with an unfair advantage during negotiation or bidding processes for the sale, exchange, or disposal of surplus state-owned lands.

Section 3. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

Pursuant to s. 24 (c), Art. I of the State Constitution, this bill must pass by a two-thirds vote of each house of the Legislature.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons purchasing surplus state-owned property may pay more as the division will have a stronger negotiating advantage.

C. Government Sector Impact:

The DEP anticipates a positive fiscal impact for the state's land managing agencies if this bill is enacted as revenue from the disposal of surplus state-owned lands is returned to the state agency with primary land management responsibilities.

VI. Technical Deficiencies:

Page 2, line 24 – The word “the” is repeated twice; one “the” should be removed.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2158

Amendment No. _____



852154

#1

CHAMBER ACTION

SenateHouse.
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.**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY****DATE:** 4-15-04**TIME:** 4:45 P.M.

Senator Fasano moved the following amendment:

Senate AmendmentOn page 2, line 17, delete the word "associated"and insert: contract or

Bill No. SB 2158

Amendment No. _____



153928

#2

CHAMBER ACTION

SenateHouse

GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY

DATE: 4-15-04TIME: 4:45 P.m.

Senator Fasano moved the following amendment:

Senate Amendment

On page 2, line 24, delete that line

and insert: the sale, disposal, or exchange of the land to
facilitate closure of

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

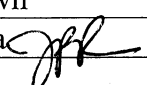

BILL: CS/SB 3006

SPONSOR: Ethics and Elections Committee and Senator Cowin

SUBJECT: Public Records; Campaign Finance

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Fav/CS
2.	Brown	Lang	JU	Favorable
3.	Rhea 	Wilson 	GO	
4.			RC	
5.				
6.				

I. Summary:

This Committee Substitute is linked to Committee Substitute for Senate Bill 3004, which creates an electronic filing system for campaign finance reports filed with the Division of Elections.

Committee Substitute for Senate Bill 3006 creates a public records exemption for user identifications, passwords, and other identifying information assigned to authorized users by the Department of State for limiting access to the electronic filing system. The bill also creates a temporary public records exemption for all records, reports, and files electronically stored in the system as a result of periodic data submissions by reporting groups throughout the reporting period, which are made available to the public on the statutory due date for submitting a report of all unreported financial activities for the reporting period.

Article I, s. 24(c), Fla. Const., requires a two-thirds vote of each house for passage of a newly created public records or public meetings exemption. If enacted by such vote, the bill takes effect upon becoming law, provided CS/SB 3004 or similar bill creating the electronic filing system is also enacted into law.

This bill creates section 106.0706 of the Florida Statutes.

II. Present Situation:

A. Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida

Legislature in 1909.¹ In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, expresses Florida's public policy regarding access to public records by providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Law³ specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. . . .

The Public Records Law states that, unless specifically exempted, all agency⁴ records are to be available for public inspection. The term "public records" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

¹ Chapter 5942, L.O.F. (1909).

² Article I, s. 24 of the State Constitution

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "... any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

⁵ Section 119.011(1), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution permits only the Legislature the authority to create exemptions to public records requirements.⁸ Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes certain records confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹¹ If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹²

The Open Government Sunset Review Act of 1995¹³ states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are if the exemption:

- 1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁴

⁸ Article I, s. 24(c) of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

¹⁰ Article I, s. 24(c) of the State Constitution.

¹¹ Attorney General Opinion 85-62.

¹² *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15(4)(b), F.S.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

While the standards in the Open Government Sunset Review Act appear to limit the Legislature in the process of review of exemption, one session of the Legislature cannot bind another.¹⁵ The Legislature is only limited in its review process by constitutional requirements. In other words, if an exemption does not explicitly meet the requirements of the act, but falls within constitutional requirements, the Legislature cannot be bound by the terms of the Open Government Sunset Review Act. Further, s. 119.15(4)(e), F.S., makes explicit that:

... notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure.¹⁶ For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother *who was a party* to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant.¹⁷ The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action *upon a showing of exceptional circumstances* and if the trial court takes all precautions to ensure the confidentiality of the records.¹⁸

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction punishable by a fine not exceeding \$500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

B. Filing of Periodic Campaign Finance Reports

Florida law requires many candidates, political committees supporting or opposing certain candidates or statewide ballot issues, committees of continuous existence (“CCEs”), and certain

¹⁵ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974)

¹⁶ *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985).

¹⁷ *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999).

¹⁸ *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2d DCA 1990).

individuals¹⁹ to file periodic reports of their financial activities with the Division of Elections on paper forms provided by the division. The exact information that must be included on each report and the reporting dates vary, depending on the status of the reporting group or individual.²⁰ Florida law is consistent, however, in providing that reports submitted to the Division must include all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding an election must contain all previously unreported contributions and expenditures as of the date preceding the designated due date (the Thursday immediately preceding the election).²¹

III. Effect of Proposed Changes:

This public records bill is linked to CS/SB 3004, creating a mandatory electronic filing system for all periodic campaign finance reports by candidates, state political parties, political committees, CCEs, and other groups or individuals required to file with the division.

The bill creates public records exemptions for:

- **Security/Identification:** exempts from public records all user identifications, passwords, and other identifying information used by the Department of State to limit unauthorized access to the electronic filing system.
- **Periodic Data Submission:** temporarily exempts all records, reports, and files submitted in advance of the statutory report filing date by a reporting group or individual and stored electronically in the system as an updated draft version of the final report to be submitted. This bill does require, however, that the exemption ceases when reports are periodically subject to filing deadlines.

The bill also provides for automatic repeal of the exemption in s. 106.0706, F.S., on October 2, 2009, unless reenacted by the Legislature.

¹⁹ Individuals making “independent expenditures” with respect to candidates or issues aggregating \$100 or more must report their expenditures in the same manner as political committees supporting or opposing such candidates or issues. Section 106.071(1), F.S.

²⁰ For example, legislative candidates, political committees, and CCEs required to file with the division do so on a quarterly basis, with the report due on the 10th day following the end of each calendar quarter. Section 106.07(1), F.S. Reporting frequency increases after the last day of qualifying (periodic reporting dates during the election season are on the 32nd, 18th and 4th days immediately preceding the first primary election, and on the 18th and 4th days immediately preceding the second primary and general election). *Id.* Most other groups and individuals required to file with the division must do so on the same reporting schedule. *See* ss. 106.04(4)(b)1., F.S. (reporting dates for CCEs); 106.071(1), F.S. (reporting dates for persons making independent expenditures of \$100 or more). The state executive committee of a political party follows the same quarterly off-season reporting schedule (on the 10th day following the end of each calendar quarter), but is only required to file on the Friday immediately preceding a primary or general election after the close of state candidate qualifying. Section 106.29(1), F.S., (reporting dates for state executive committee of a political party). All reports must be filed by 5 p.m. on the designated due date; reports in envelopes with postmarks from the U.S. Postal Service through midnight of the designated due date, however, are deemed timely filed. Section 106.07(2), F.S.

²¹ Section 106.07(2), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

See above.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This public records bill is linked to CS/SB 3004, which creates s. 106.0705 mandating the electronic filing of periodic campaign finance reports.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 3006

Amendment No. _____



312644

CHAMBER ACTION

SenateHouse**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**DATE: 4-16-04TIME: 9:00 A.M.

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11 Senator Cowin moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

12
13
14
15
16 and insert:

17 Section 1. Section 106.0706, Florida Statutes, is
18 created to read:

19 106.0706 Electronic filing of campaign finance
20 reports; confidentiality of information and draft
21 reports.--All user identifications and passwords held by the
22 Department of State pursuant to s. 106.0705 are confidential
23 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution. All records, reports, and files stored in the
25 electronic filing system pursuant to s. 106.0705 are exempt
26 from s. 119.07(1) and s. 24(a), Article I of the State
27 Constitution, until such time as the report has been submitted
28 as a filed report. This section is subject to the Open
29 Government Sunset Review Act of 1995 in accordance with s.
30 119.15 and shall stand repealed on October 2, 2009, unless
31 reviewed and saved from repeal through reenactment by the

Bill No. CS for SB 3006

Amendment No. _____



312644

1 Legislature.

2 Section 2. (1) The Legislature finds that it is a
3 public necessity to exempt from public records requirements
4 all user identifications and passwords held by the Department
5 of State pursuant to section 106.0705, Florida Statutes, as
6 created in Senate Bill 3004 or similar legislation. The
7 public-records exemption is necessary to ensure accountability
8 for the filing of false or inaccurate information. Under
9 current law, certain individuals, typically the candidate and
10 campaign treasurer or the chair of a committee or group and
11 its treasurer, must certify and bear responsibility for the
12 correctness of each campaign finance report filed with the
13 Division of Elections under pain of personal criminal
14 prosecution or administrative fine. The law uses the physical
15 signatures of such individuals on the paper campaign finance
16 reports as evidence of attestation to the veracity of the
17 report. Electronic reporting eliminates the evidentiary
18 advantages of hard-copy signatures by persons submitting
19 reports, so the provisions of law creating the electronic
20 filing system provide for the issuance of secure "sign-on"
21 information to the individuals designated, and provides that
22 such individuals are responsible for all filing using such
23 "sign-on" credentials unless they have notified the division
24 that their credentials have been compromised. Without a
25 public-records exemption for this information, there would be
26 no accountability for campaign finance reporting.

27 (2) In addition, the public-records exemption is
28 necessary to protect against the unwarranted submission of
29 false or erroneous campaign finance data. Limiting access to
30 the electronic filing system will prevent unauthorized users
31 from changing or submitting false or inaccurate information

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1 that could be damaging to the reporting individual or group
2 and result in charges being brought against the individuals
3 accountable by statute for the veracity of the information.

4 (3) The Legislature also finds that it is a public
5 necessity to exempt from public records requirements all
6 records, reports, and files created from information entered
7 into the electronic filing system by individuals and groups
8 subject to electronic campaign finance reporting requirements
9 until such time as a final report is due pursuant to law. It
10 is anticipated that best practices would encourage periodic
11 and timely updates to the draft report throughout the covered
12 reporting period and this exemption would allow reporting
13 individuals and groups adequate time to enter all the
14 information. Campaign finance reports can contain hundreds or
15 even thousands of individual entries for items such as dates,
16 names, amounts of contributions, and expenditures. It is
17 simply not technologically or practically feasible to require
18 all this information to be manually input on the designated
19 statutory due date. The public-records exemption will allow
20 reporting individuals and groups to update the information in
21 their draft reports throughout the reporting period and
22 subject the reports to internal audits to check for errors
23 prior to submission. The updated report for the entire
24 reporting period can then be submitted as required by law.

25 (4) The public-records exemption is also essential
26 because it protects reporting individuals and groups from
27 exposing their campaign finance strategies to opponents who
28 could use the reported information to their advantage. For
29 example, a large inflow of contributions to a candidate's
30 campaign during a reporting period could indicate that the
31 candidate is positioning himself or herself for a large media

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1 buy to run political advertisements. An opponent of the
2 candidate could frustrate this intention by purchasing
3 desirable media slots first.

4 (5) Finally, this public-records exemption will
5 accelerate the public's access to this information compared
6 with current law, which allows for the filing of paper reports
7 by mail on the designated due date and results in both mailing
8 and data entry delays in processing the information to the
9 Internet. Under current law, in many cases, crucial campaign
10 finance information contained in reports due on the 4th day
11 before an election is never disclosed to the public until
12 after the election is over. The electronic campaign filing
13 system, with the public-records exemption in place, will
14 eliminate these delays and provide this crucial data to the
15 electorate before election day.

16 Section 3. This act shall take effect upon becoming a
17 law if CS for Senate Bill 3004, or similar legislation
18 creating section 106.0705, Florida Statutes, to provide for
19 electronic filing of campaign treasurer's reports, is adopted
20 in the same legislative session or an extension thereof and
21 becomes law.

22
23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause

27
28 and insert:

29 A bill to be entitled

30 An act relating to public records; creating s.

31 106.0706, F.S.; creating an exemption from

Bill No. CS for SB 3006

Amendment No. _____



312644

1 public-records requirements for user
2 identification and passwords held by the
3 Department of State pursuant to s. 106.0705,
4 F.S.; creating an exemption from public records
5 requirements for records, reports, and files
6 stored in the electronic filing system pursuant
7 to s. 106.0705, F.S.; providing for expiration
8 of the exemption; providing for future
9 legislative review and repeal; providing
10 findings of public necessity; providing an
11 effective date.
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Senate Committee On
**GOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY**

Stephen R. Wise, Chair
Lesley "Les" Miller, Jr., Vice Chair

**Late Filed Amendment
Packet**

Monday, April 19, 2004
4:00 p.m. – 6:00 p.m.
110 S

*(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)*

Bill No. CS for CS for SB 1174

Amendment No.



075468

CS/CS/SB 1174 (A)

CHAMBER ACTION

Senate

House

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SENATE CLERK
OFFICE
4-19-04
10:00 A.M.

Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

On page 2, line 24, delete the words "Smart Growth"

and insert: Planning and Development

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, line 2, delete the words "Smart Growth"

and insert:

Planning and Development

Bill No. SB 1598

Amendment No. _____



591242

SB 1598 (A)

CHAMBER ACTION

Senate

House

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SENATE AMENDMENT
FILED
DATE 4-19-04
TIME 8:55 A.M.

Wronberg

Senator ~~Smith~~ moved the following amendment:

Senate Amendment

On page 3, lines 3 and 4, delete the phrase "s. 440.02,
Florida Statutes 2002,"
and insert: s. 766.118(1)(a)

Bill No. SB 1598

Amendment No. _____



942648

SB 1598 (B)

CHAMBER ACTION

SenateHouseGOVERNMENTAL OVERSIGHT
AND PRODUCTIVITY

DATE

4-19-04

TIME

8:55 A.M.

*Aronberg*Senator ~~Smith~~ moved the following amendment:**Senate Amendment**

On page 3, lines 18-23, delete those lines

and insert: Retirement System shall be increased by 0.03
percentage points.(2) The contribution rate that applies to the Special
Risk Administrative Support Class of the defined benefit
program of the Florida Retirement System shall be increased by
0.20 percentage points.

Bill No. SB 2554

Amendment No. _____



075060

SB 2554 (A)

CHAMBER ACTION

SenateHouse.
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.GOVERNMENTAL OVERSIGHT
AND PROBABILITY

DATE: 4-19-04

TIME: 10:20 A.M.

Senator Constantine moved the following amendment to amendment
(463228):

Senate Amendment (with title amendment)On page 1, line 17, delete the words "Smart Growth"and insert: Planning and Development

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 5, line 25, delete the words "Smart Growth"

and insert:

Planning and Development